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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, November 18, 2008
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

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Reader Aids

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http:// listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AL63

Prevailing Rate Systems; Change in Nonappropriated Fund Federal Wage System Survey Schedule From Fiscal Year to Calendar Year

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing a final rule to change the annual schedule of nonappropriated fund (NAF) Federal Wage System wage surveys from a fiscal year cycle to a calendar year cycle. The purpose of this change is to move certain wage surveys to a different time of year and thus optimize the data collection process for those areas. In addition, this change would more evenly distribute the workload for the agency responsible for conducting NAF surveys.

DATES: This rule is effective on December 10, 2008

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: On May 28, 2008, the U.S. Office of Personnel Management (OPM) issued a proposed rule (73 FR 30526) to change the nationwide schedule of nonappropriated fund (NAF) Federal Wage System regular wage surveys at appendix B of part 532 of title 5, Code of Federal Regulations, from a fiscal year cycle to a calendar year cycle. The proposed rule had a 30-day public comment period, during which OPM received no comments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this final rule in accordance with Executive Order 12866.

Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Michael W. Hager,

Acting Director.

■ Accordingly, the U.S. Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Amend appendix B to subpart B by revising paragraph (3) to read as follows:

Appendix B to Subpart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys

* * * * *

(3) Whether full-scale surveys will be conducted in odd or even numbered calendar years.

State	Wage area	Beginning month of survey	Calendar year of full-scale survey odd or even
Alabama	Calhoun	April	Even.
	Madison	April	Even.
	Montgomery	April	Odd.
Alaska	Anchorage	June	Even.
Arizona	Maricopa	October	Even.
	Pima	October	Even.
	Yuma	October	Even.
Arkansas	Pulaski	April	Odd.
California	Kern	September	Odd.
	Los Angeles	September	Even.
	Monterey	September	Odd.
	Orange	September	Even.
	Riverside	September	Even.
	Sacramento	February	Odd.
	San Bernardino	September	Even.
	San Diego	September	Odd.
	San Joaquin	February	Odd.
	Santa Barbara	September	Even.
	Santa Clara	September	Odd.
	Solano	September	Odd.
	Ventura	September	Even.
Colorado	Arapahoe-Denver	July	Even.

State	Wage area	Beginning month of survey	Calendar year of full-scale survey odd or even
	El Paso	July	Even.
Connecticut	New London	July	Even.
Delaware	Kent	August	Odd.
District of Columbia	Washington, DC	August	Even.
Florida	Bay	January	Even.
	Brevard	January	Odd.
	Miami-Dade	January	Odd.
	Duval	January	Odd.
	Escambia	January	Even.
	Hillsborough	January	Odd.
	Monroe	January	Odd.
	Okaloosa	January	Even.
	Orange	January	Even.
Georgia	Chatham	March	Odd.
	Clayton-Cobb-Fulton	June	Odd.
	Columbus	June	Odd.
	Dougherty	March	Odd.
	Houston	April	Odd.
	Lowndes	March	Odd.
	Richmond	April	Odd.
Guam	Guam	September	Even.
Hawaii	Honolulu	May	Even.
Idaho	Ada-Elmore	July	Odd.
Illinois	Lake	April	Even.
	St. Clair	April	Even.
Kansas	Leavenworth-Jackson-Johnson	April	Even.
	Sedgwick	April	Odd.
Kentucky	Christian-Montgomery	February	Even.
	Hardin-Jefferson	March	Even.
Louisiana	Bossier-Caddo	March	Odd.
	Orleans	June	Odd.
	Rapides	March	Odd.
Maine	Cumberland	October	Odd.
	York	October	Odd.
Maryland	Anne Arundel	August	Even.
	Charles-St. Mary's	August	Even.
	Frederick	August	Even.
	Harford	May	Even.
	Montgomery-Prince George's	August	Even.
Massachusetts	Hampden	October	Odd.
	Middlesex	October	Odd.
Michigan	Macomb	May	Odd.
Minnesota	Hennepin	July	Odd.
Mississippi	Harrison	March	Even.
	Lauderdale	March	Odd.
	Lowndes	March	Odd.
Montana	Cascade	July	Odd.
Nebraska	Douglas-Sarpy	April	Even.
Nevada	Churchill-Washoe	January	Even.
	Clark	January	Even.
New Jersey	Burlington	August	Odd.
	Monmouth	August	Odd.
	Morris	August	Odd.
New Mexico	Bernalillo	February	Odd.
	Curry	June	Odd.
	Dona Ana	February	Odd.
New York	Jefferson	May	Odd.
	Kings-Queens	October	Even.
	Niagara	May	Odd.
	Orange	May	Odd.
North Carolina	Craven	March	Even.
	Cumberland	March	Even.
	Onslow	February	Even.
	Wayne	March	Even.
North Dakota	Grand Forks	July	Odd.
	Ward	July	Odd.
Ohio	Greene-Montgomery	April	Odd.
Oklahoma	Comanche	March	Even.
	Oklahoma	March	Even.
Pennsylvania	Allegheny	May	Odd.
	Cumberland	May	Even.
	Montgomery	August	Odd.

State	Wage area	Beginning month of survey	Calendar year of full-scale survey odd or even
	York	May	Even.
Puerto Rico	Guaynabo-San Juan	February	Even.
Rhode Island	Newport	July	Even.
South Carolina	Charleston	February	Even.
	Richland	March	Even.
South Dakota	Pennington	June	Even.
Tennessee	Shelby	February	Even.
Texas	Bell	June	Odd.
	Bexar	June	Even.
	Dallas	June	Even.
	El Paso	February	Odd.
	McLennan	May	Odd.
	Nueces	June	Even.
	Tarrant	June	Even.
	Taylor	June	Odd.
	Tom Green	June	Odd.
	Wichita	March	Even.
Utah	Davis-Salt Lake-Weber	July	Odd.
Virginia	Alexandria-Arlington-Fairfax	August	Even.
	Chesterfield-Richmond	August	Odd.
	Hampton-Newport News	May	Even.
	Norfolk-Portsmouth-Virginia Beach	May	Even.
	Prince William	August	Even.
Washington	Kitsap	June	Even.
	Pierce	July	Even.
	Snohomish	July	Even.
	Spokane	July	Odd.
Wyoming	Laramie	July	Even.

* * * * *

[FR Doc. E8–26561 Filed 11–7–08; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 731

RIN: 3206–AL38

Suitability

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: In order to limit duplication of efforts by applying reciprocity where appropriate to the investigative and adjudicative processes, the Office of Personnel Management (OPM) is modifying regulations governing Federal employment suitability. The final regulations establish the requirements for applying reciprocity to Federal employment suitability determinations and investigations.

DATE: *Effective Date:* The rule is effective January 9, 2009.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert by telephone at (202) 606–2930; by FAX at (202) 606–2613; or by e-mail at *CWRAP@opm.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

On June 23, 2008, OPM published at 73 FR 35358 (2008) proposed amendments to the regulations in part 731 of title 5, Code of Federal Regulations (CFR), to require, with limited exceptions, the application of reciprocity in any case where the person previously was investigated at a level that meets or exceeds that required for the new position, was determined suitable under 5 CFR part 731 or fit based on character or conduct criteria equivalent to the suitability factors of 5 CFR 731.202, and meets continuous service requirements described in the regulations. The public comment period on the proposed amendments ended on August 22, 2008. OPM received comments from two Federal agencies or departments, one union, and two individuals. OPM has carefully considered the comments received. Subsequent to publication of the proposed regulations, President George W. Bush signed Executive Order 13467 (June 30, 2008), which established a governance structure to improve Executive branch policies and procedures regarding various background investigations and adjudications. Section 2.1(c) of E.O. 13467 requires that except as otherwise authorized by law, background investigations and adjudications shall be mutually and reciprocally accepted by all agencies. The E.O. requires that, with respect to suitability, agencies may not establish additional investigative or adjudicative requirements without the approval of the Suitability Executive Agent, and such approval shall be limited to circumstances where additional requirements are necessary to address significant needs unique to the agency involved or to protect national security. Section 2.3(b) of the E.O. provides that the Director of the Office of Personnel Management shall serve as the Suitability Executive Agent. The exceptions to reciprocity provided in these regulations are consistent with these provisions.

Reciprocity of Background Investigations

One commenter opposed accepting background checks on contractor employees who have had their background investigations conducted by their employing company. The commenter believes that the Federal suitability process involves more scrutiny and a private company's background checks may not involve the same extensive checks as does the Federal suitability process. The proposed regulation only applies where a Federal agency has previously determined the contract employee was fit to perform work on the contract based on criteria equivalent to the factors provided at 5 CFR 731.202. There is no requirement or expectation that reciprocity would be granted to investigations or fitness determinations made by private companies on their own employees.

One commenter raised a concern regarding granting reciprocity to a previous investigation and favorable suitability determination without the ability to check whether the individual has performed any acts that might exclude them from employment subsequent to this prior investigation. This commenter raises the example of a person who is arrested for criminal misconduct a year or two subsequent to an investigation and favorable suitability determination by a Federal agency. The commenter argues that when that person applies for employment with a second agency, under the proposed regulations, unless the second agency is aware of the intervening misconduct, it must grant reciprocity to the earlier investigation and favorable suitability determination. In response, we note that the proposed regulations do not change the existing rules governing how the misconduct in the example is identified and addressed. Both under current regulations at 5 CFR 731.104(a)(6) and proposed regulations at 5 CFR 731.104(a)(2), the person in the example would not be subject to a new suitability investigation. Absent a change in risk level, misconduct by an employee subsequent to an investigation and favorable suitability determination can and should be addressed under adverse action procedures provided at 5 CFR part 752. This is true regardless of whether the employee has several years of service with the same agency or has recently transferred to a new agency. There are a variety of ways in which such misconduct can be identified and addressed, including by review of a newly-obtained Declaration for Federal Employment, Optional Form 306.

A related question raised by the same commenter noted that while under the proposed regulations a person will be subject to a new investigation if ''an agency obtains new information that calls into question the person's suitability,'' nowhere does the proposed regulation define or explain how an agency ''obtains new information.'' There are a variety of ways by which new information might be obtained. As explained in the supplementary materials to the proposed regulations, new information might be obtained from a newly-executed Declaration for Federal Employment, Optional Form 306. Other sources include responses to questions raised during employment interviews or during reference checks.

One commenter asked whether the intent of § 731.104(d) is to exclude public trust positions from the new reciprocity requirements. This is not the intent of this section. This section has been modified to clarify that the provisions in § 731.104, setting out limitations on when an appointment is subject to a new investigation, do not negate agencies' ability to conduct reinvestigations for public trust positions under other authority as described in § 731.106.

Another commenter stated that there is no means to challenge a decision by OPM or an agency that a new investigation or suitability determination is required because a prior fitness determination was not based on criteria substantially equivalent to the factors provided at 5 CFR 731.202. This commenter urged that such decision be subject to review by the Merit Systems Protection Board (MSPB) or alternatively, by OPM. OPM notes that any suitability action taken based on a new investigation, such as removal, cancellation of eligibility, or debarment, may be appealed to MSPB under § 731.501. Furthermore, creation of new appeal or review rights is outside the scope of this regulation and will not be further addressed here.

Investigation Requirements for Position Risk Level Changes

One commenter pointed out that § 731.106(c)(2) refers to ''investigative types'' in reference to 5 CFR 732.202 when that regulation instead uses the term ''investigative requirements.'' We have changed the language in § 731.106(c)(2) to ''investigative requirements'' to be consistent with 5 CFR part 732.

Another comment concerned the meaning of § 731.106(e), which provides when the risk level of a position is changed to a higher level or an employee experiences a change to a position with a higher risk level, he or she can remain in that position pending any upgrade in the investigation required. The commenter stated that it was unclear whether it is the original or new position in which the person could remain. This section was modified in the proposed regulations to clarify that the movement to the higher risk position is not limited to promotion but may include reassignment or even demotion. The modification does not otherwise change the meaning of the section. Thus, as is the case under the current regulations, a person may remain in his or her current position if the risk level for that position changes to a higher level, and may encumber any new position to which he or she moved even if that position has a higher risk level than his or her previous position. In either case, any upgrade in investigation required for the new risk level should be initiated within 14 calendar days. If the results of the upgraded investigation warranted action such as removal, that removal would be from the new higher risk level position.

One commenter noted that the OPM issuances referenced in § 731.106(c)(2) are limited to official use only and are not made available to the public. This commenter stated that in the absence of being able to review those issuances, it is impossible to provide comments on § 731.106(c)(2). The very limited modification proposed in § 731.106(c)(2) simply reflects the existing relationship between position risk determination under part 731 and the position sensitivity determinations made under 5 CFR part 732 when identifying the appropriate level of investigation needed for a particular position. It makes no substantive change in the regulatory requirement. This commenter questioned the relationship between risk designation and sensitivity designation and asked for an explanation of a position's sensitivity designation on the nature and content of a suitability investigation. They noted that in Executive Order 13467 (June 30, 2008), the President directed that investigative standards for security clearance and suitability investigations be aligned, to the extent possible. They expressed concern that an investigation designed to determine a public trust employee's suitability may be inappropriately broadened to include lines of investigation appropriate only in a security investigation under part 732. As stated in current regulation at § 731.101(a), suitability determinations made under part 731 are ''distinct'' from determinations of eligibility for assignment to, or retention in, sensitive national security positions. Although the President has directed agencies to ensure that investigative standards for security clearance and suitability investigations are aligned to avoid duplicative steps, the purpose and basis of the two determinations remain distinct and nothing in the proposed regulations changes that distinction.

Reciprocity of Suitability Determinations

One commenter urged that a definition of ''core duties'' be provided and stated that in the absence of a definition, each agency would be required to define and ''codify'' the core duties for their organization. Another commenter on this section recommended that OPM define core duties to narrowly limit the exception provided at § 731.202(d) and that OPM review all agency definitions of their core duties and the types of conduct alleged to be incompatible with those duties. Specifically, they urged that any incompatibility with core duties generally be limited to a statutory or regulatory bar such as the legal barrier to the employment of a person with a record of domestic abuse in a gun-carrying position.

Whether an individual's prior conduct is incompatible with the core duties of a position is inherently a case-by-case determination focused not only on the unique duties of the specific position, but also on the specific nature of the prior conduct. Incompatibility is not limited to instances where employment would violate a statutory or regulatory bar but could extend to conduct which clearly is antithetical to the key responsibilities of the new position. For example, prior conduct involving financial fraud may be antithetical to the duties of a bank examiner and, as discussed in the supplementary materials to the proposed regulations, prior criminal misconduct may be antithetical to the duties of a law enforcement official. Core duties will vary from agency to agency and from position to position, and the identification of core duties is properly within the discretion of individual agencies. We do not believe that OPM review of agency identification of core duties and incompatible conduct is appropriate. However, we agree that a general definition of ''core duty'' would assure more consistent application of the exception provided at § 731.202(d). Accordingly, we have added a definition of ''core duty.''

This commenter further recommended that an agency decision under § 731.202(d) that a person's investigative record on file shows conduct that is incompatible with the core duties of the relevant covered position be subject to review by the Merit Systems Protection Board (MSPB) or, alternatively, by OPM. OPM notes that any action taken based on a negative suitability determination, such as removal, cancellation of eligibility, or debarment, may be appealed to the MSPB under § 731.501. Furthermore, creation of new appeal or review rights is outside the scope of this regulation and will not be further addressed here.

One commenter asked whether a suitability action must be based on specific factors listed at § 731.202 or whether such an action can be based on criteria equivalent to those suitability factors. The proposed regulations provide that reciprocity shall be granted a previous investigation and favorable suitability determination based on criteria equivalent to the suitability factors listed at § 731.202 as long as the individual meets the continuous service requirement. However, the requirement stated in § 731.202(b) that any suitability action must be based on the factors listed at § 731.202(b) remains unchanged. This same commenter questioned the legal justification for investigative inquiry into such matters as the grounds for a person's divorce, personal finances, or foreign travel and asks about the relationship of such matters to the factors listed at § 731.202(b). These questions will not be addressed here as they concern the factors listed at § 731.202(b) which are outside the scope of the proposed regulation.

Reporting of Suitability Determinations

One commenter urged that a statement be added to the regulation to make it clear that an agency will not be held to reciprocity if the prior investigation was not reported to OPM. This same commenter also raised questions about the nature and detail of investigative results to be reported and also expressed concern regarding how quickly the new agency would be able to obtain information regarding any prior investigation, suitability determination, and suitability action. Even if information regarding a prior investigation and adjudication has not yet been reported to OPM, agencies must follow the reciprocity requirements of these regulations. If the information regarding a prior investigation and adjudication is not in OPM's database or is insufficient to make a reciprocity decision, agencies should contact the former or current employing agency to obtain the necessary information to either grant or deny reciprocity consistent with these regulations. If after contacting the former or current employing agency, an agency is unable to determine the investigation on file is at the appropriate level or confirm that the other requirements for reciprocity apply, then necessarily no reciprocity may be granted. For these reasons, we believe the recommended statement is neither appropriate nor necessary.

Miscellaneous Comments

One commenter recommended changing the provisions governing appeals of suitability actions to the Merit Systems Protection Board (MSPB). They recommended that MSPB be authorized to issue summary judgment without a hearing where the MSPB administrative judge finds there are no material facts in dispute or genuine issues of credibility. We will take this suggestion under advisement for future consideration but it is outside the scope of the current proposed regulation and therefore has not been considered.

Another commenter questioned whether an installation can pass over a selected candidate and proceed to the next preferred candidate when the results of the preliminary suitability determination reveal disqualifying information. Nothing in the proposed regulations alters agency obligations under law to follow proper pass over procedures.

One commenter urged that suitability standards ''currently under development'' be issued prior to the implementation of these proposed regulations. The suitability factors referenced in the proposed regulations are at 5 CFR 731.202 and are not under development. This same commenter also recommended that appropriate training be provided to all deciding officials, in advance of the implementation of these regulations, so as to ensure the consistency of determinations. Agencies having delegated suitability adjudication authority have been required to use the suitability factors for at least 20 years and agency staff should be well trained in their application.

One commenter stated that language in the supplementary material to the proposed regulations concerning coverage appears inconsistent with the actual regulations. Specifically, the supplementary states that ''any proposed changes to these regulations apply only to persons that are in, or in the process of moving into, the competitive service or career Senior Executive Service'' and the regulatory language refers to ''covered positions,'' a term which is defined in the current regulations (final regulations effective June 16, 2008). We agree that there may be some confusion since, under the most recent final regulations, the coverage of part 731 was modified to include certain positions in the excepted service. To clarify, the proposed regulations will apply to persons who are in, or in the process of moving to, a covered position as defined at § 731.101(b).

Technical Amendments

OPM has made a technical amendment to the Authorities for this part to reflect the President's signing of Executive Order 13467 on June 30, 2008, which designates the OPM Director as Suitability Executive Agent.

Executive Order 12866, Regulatory Review

The Office of Management and Budget has reviewed the final rule in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they will affect Federal agencies, employees, and applicants only.

E.O. 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988—Civil Justice Reform

This regulation meets the applicable standard set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private section, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel and organization, and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 5 CFR Part 731

Administrative practices and procedures, Government employees.

Office of Personnel Management.

Michael W. Hager,

Acting Director.

■ Accordingly, OPM is amending 5 CFR part 731 as follows:

PART 731—SUITABILITY

Subpart A—Scope

■ 1. The authority citation for part 731 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 7301; E.O. 10577, E.O. 13467, 3 CFR, 1954–1958 Comp., p. 218, as amended, 5 CFR, parts 1, 2 and 5.

■ 2. In § 731.101, amend paragraph (b) by adding a new definition for the term ''Core Duty'' to read as follows:

§ 731.101 Purpose.

* * * * *

(b) * * *

Core Duty means a continuing responsibility that is of particular importance to the relevant covered position or the achievement of an agency's mission.

* * * * *

■ 3. In § 731.104, revise paragraphs (a) and (b)(2) and add new paragraphs (d) and (e) to read as follows:

§ 731.104 Appointments subject to investigation.

(a) To establish a person's suitability for employment, appointments to covered positions identified in § 731.101 require the person to undergo an investigation by OPM or by an agency with delegated authority from OPM to conduct investigations. However, except as provided in paragraph (b)(2), an appointment will not be subject to investigation when the person being appointed has undergone a background investigation and the appointment involves:

(1) Appointment or conversion to an appointment in a covered position if the person has been serving continuously with the agency for at least 1 year in one or more covered positions subject to investigation;

(2) Transfer to a covered position, provided the person has been serving continuously for at least 1 year in a covered position subject to investigation;

(3) Transfer or appointment from an excepted service position that is not a covered position to a covered position, provided the person has been serving continuously for at least 1 year in a position where the person has been determined fit for appointment based on criteria equivalent to the factors provided at 5 CFR 731.202; or

(4) Appointment to a covered position from a position as an employee working as a Federal Government contract employee, provided the person has been serving continuously for at least 1 year in a job where a Federal agency determined the contract employee was fit to perform work on the contract based on criteria equivalent to the factors provided at 5 CFR 731.202.

* * * * *

(b) * * *

(2) An appointment to a covered position also will be subject to investigation when:

(i) The covered position requires a higher level of investigation than previously conducted for the person being appointed; or

(ii) An agency obtains new information in connection with the person's appointment that calls into question the person's suitability under § 731.202;

(d) Reinvestigation requirements under § 731.106 for public trust positions are not affected by this section.

(e) For purposes of this section, ''criteria equivalent to the factors provided at 5 CFR 731.202'' are criteria that provide adequate assurance that the person to be appointed, converted to an appointment, or transferred is suitable to be employed in a covered position, as determined by OPM, in issuances under this regulation. A decision by OPM, or by an agency applying guidance from OPM, that a prior fitness determination was not based on criteria equivalent to the factors provided at 5 CFR 731.202, and that a new investigation or adjudication is necessary is not subject to review under section 731.501 of this part.

■ 4. In § 731.106, revise paragraphs (c)(2) and (e) to read as follows:

§ 731.106 Designation of public trust positions and investigative requirements.

* * * * *

(c) * * *

(2) All positions subject to investigation under this part must also receive a sensitivity designation of Special-Sensitive, Critical-Sensitive, or Noncritical-Sensitive, when appropriate. This designation is complementary to the risk designation, and may have an effect on the position's investigative requirement. Sections 732.201 and 732.202 of this chapter detail the various sensitivity levels and investigative requirements. Procedures for determining investigative requirements for all positions based upon risk and sensitivity will be published in OPM issuances, as described in §§ 731.102(c) and 732.201(b).

* * * * *

(e) *Risk level changes.* If an employee experiences a change to a higher position risk level due to promotion, demotion, or reassignment, or the risk level of the employee's position is changed to a higher level, the employee may remain in or encumber the position. Any upgrade in the investigation required for the new risk level should be initiated within 14 calendar days after the promotion, demotion, reassignment or new designation of risk level is final.

* * * * *

Subpart B—Suitability Determinations and Actions

■ 6. In § 731.202, add a new paragraph (d) to read as follows:

§ 731.202 Criteria for making suitability determinations.

* * * * *

(d) *Reciprocity.* An agency cannot make a new determination under this section for a person who has already been determined suitable or fit based on character or conduct unless a new investigation is required under § 731.104 or § 731.106, or no new investigation is required but the investigative record on file for the person shows conduct that is incompatible with the core duties of the relevant covered position.

■ 7. Add a new § 731.206 to read as follows:

§ 731.206 Reporting requirements.

Agencies must report to OPM the level and result of each background investigation, suitability determination, and suitability action taken under this part, as required in OPM issuances.

[FR Doc. E8–26558 Filed 11–7–08; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket ID OCC–2008–0020]

RIN 1557–AD11

Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure, set forth at 12 CFR part 19, to adjust the maximum amount of each civil money penalty (CMP) within its jurisdiction to administer to account for inflation. This action, including the amount of the adjustment, is required under the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Debt Collection Improvement Act of 1996. The OCC is also amending part 19 to add to our list of penalties a new CMP, which was authorized after the OCC last adjusted its CMPs.

DATES: *Effective Date:* December 10, 2008.

FOR FURTHER INFORMATION CONTACT: Michele Meyer, Assistant Director, or Jean Campbell, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, or David Weber, Counsel, Enforcement and Compliance Division, (202) 874–4800, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The Inflation Adjustment Act, 28 U.S.C. 2461 note, requires the OCC, as well as other Federal agencies with CMP authority, periodically to publish regulations adjusting for inflation each CMP authorized by a law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Inflation Adjustment Act requires adjustments to be made at least once every four years following the initial adjustment. The OCC's prior adjustment to each CMP was published in the **Federal Register** on November 10, 2004, 69 FR 65067, and became effective on December 10, 2004.

The Inflation Adjustment Act requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the year in which the adjustment will be made and June of the calendar year in which the amount was last set or adjusted. The Inflation Adjustment Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers (CPI–U) published by the Department of Labor.[1] *See* 28 U.S.C. 2461 note. In addition, the Inflation Adjustment Act provides rules for rounding off increases,[2] and requires that any increase in a CMP apply only to violations that occur after the date of the adjustment. Finally, section 2 of the Debt Collection Improvement Act amended the Inflation Adjustment Act by limiting the initial adjustment of a CMP pursuant to the Inflation Adjustment Act to no more than 10 percent of the amount set by statute. *See* 28 U.S.C. 2461 note.

Description of the Final Rule

Inflation Adjustment

This final rule adjusts the amount for each CMP that the OCC has jurisdiction to impose in accordance with the statutory requirements by revising the table contained in subpart O of 12 CFR part 19. The table identifies the statutes that provide the OCC with CMP authority, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

The Act requires that we compute the inflation adjustment by comparing the CPI–U for June of the calendar year preceding the adjustment with the CPI–U for June of the year in which the CMPs were last set or adjusted. *See* 28 U.S.C. 2461 note. The majority of CMPs were adjusted in 2004. For those CMPs, we compared the CPI–U for June 2007 (208.352) with the CPI–U for June 2004 (189.7). This resulted in an inflation adjustment of 9.8 percent. Two penalties were last adjusted in 2000.[3] For those penalties, we compared the CPI–U for June 2007 (208.352) with the CPI–U for June 2000 (172.4). This resulted in an inflation increase of 20.9 percent. Three penalties were last adjusted in 1997.[4] For those penalties, we compared the CPI–U for June 1997 (160.3) with the CPI–U for June 2007 (208.352). This resulted in an inflation increase of 30.0 percent.

We multiplied the amount of each CMP by the appropriate percentage inflation adjustment, added that amount to the current penalty, and rounded the

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[1] The Department of Labor computes the CPI–U using two different base time periods, 1967 and 1982–1984, and the Act does not specify which of these base periods should be used to calculate the inflation adjustment. The OCC, consistent with the other Federal banking agencies, has used the CPI–U with 1982–84 as the base period. Data on the CPI–U is available at *http://bls.gov.*

[2] The Act's rounding rules require that an increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000. *See* 28 U.S.C. 2461 note.

[3] Those penalties last adjusted in 2000 are authorized by 12 U.S.C. 164 and 3110(c), Tier 1. *See* 65 FR 66250 (Dec. 11, 2000).

[4] Those penalties last adjusted in 1997 are authorized by 12 U.S.C. 1832(c), 12 U.S.C. 3909(d)(1), and 12 U.S.C. 1884. *See* 62 FR 3199 (Jan. 22, 1997).

resulting dollar amount up or down according to the rounding requirements of the Act. In some cases, rounding resulted in no adjustment to the CMP. The following table shows both the present CMPs and the inflation adjusted CMPs. The table published in § 19.240(a) is shorter and shows only the adjusted CMPs, not the calculations.

Section 19.240(b) is amended, consistent with the statute, to state that the adjustments made in § 19.240(a) apply only to violations that occur after the effective date of this final rule.

BILLING CODE 4810–33–P

U.S. Code Citation	Tier (if applicable)	Maximum Penalty (in Dollars)	Percentage Increase	Amount of Increase (in Dollars)	Amount of Increase – Rounded (in Dollars)	Adjusted Maximum Penalty (in Dollars)
12 U.S.C. 93(b)	Tier 1	6,500	9.8%	$637	$1,000	$7,500
	Tier 2	32,500	9.8%	3,185	5,000	37,500
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 164	Tier 1	2,200	20.9%	460	0	No Change
	Tier 2	27,000	9.8%	2,646	5,000	32,000
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 504	Tier 1	6,500	9.8%	637	1,000	7,500
	Tier 2	32,500	9.8%	3,185	5,000	37,500
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 1817(j)(16)	Tier 1	6,500	9.8%	637	1,000	7,500
	Tier 2	32,500	9.8%	3,185	5,000	37,500
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 1818(i)(2)	Tier 1	6,500	9.8%	637	1,000	7,500
	Tier 2	32,500	9.8%	3,185	5,000	37,500
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 1820(k)(6)(A)(ii)		250,000	7.1%	17,750	25,000	275,000
12 U.S.C. 1832(c)		1,100	30.0%	330	0	No Change
12 U.S.C. 1884		110	30.0%	33	0	No Change
12 U.S.C. 1972(2)(F)	Tier 1	6,500	9.8%	637	$1,000	7,500
	Tier 2	32,500	9.8%	3,185	5,000	37,500
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 3110(a)		32,500	9.8%	3,185	5,000	37,500
12 U.S.C. 3110(c)	Tier 1	2,200	20.9%	460	0	No Change
	Tier 2	27,000	9.8%	2,646	5,000	32,000
	Tier 3	1,250,000	9.8%	122,500	125,000	1,375,000
12 U.S.C. 3909(d)(1)		1,100	30.0%	330	0	No Change
15 U.S.C. 78u-2(b)	Tier 1 (natural person)	6,500	9.8%	637	1,000	7,500
	Tier 1 (other person)	65,000	9.8%	6,370	5,000	70,000
	Tier 2 (natural person)	65,000	9.8%	6,370	5,000	70,000
	Tier 2 (other person)	325,000	9.8%	31,850	25,000	350,000
	Tier 3 (natural person)	130,000	9.8%	12,740	10,000	140,000
	Tier 3 (other person)	625,000	9.8%	61,250	50,000	675,000
42 U.S.C. 4012a(f)(5)	Per violation	385	9.8%	38	0	No Change
	Per year	125,000	9.8%	12,250	10,000	135,000

New CMP

The OCC is adding to its list of penalties a new CMP, as authorized by 12 U.S.C. 1820(k).[5] Section 1820(k) applies to senior examiners, or functionally equivalent positions, at a Federal banking agency or Federal Reserve Bank. It prohibits a senior examiner from knowingly accepting compensation as an employee, officer, director, or consultant, from certain depository institutions or depository institution holding companies he or she examined, or from certain related entities, for one year after the examiner leaves the employment or service of the Federal banking agency or Federal Reserve Bank. The statute and its implementing regulation[6] permit the OCC to assess a penalty of not more than $250,000 for a violation of the one-year restriction. Section 1820(k) became effective on December 17, 2005.[7] To adjust this CMP, we compared the CPI–U for June 2007 (208.352) with the CPI–U for June 2005 (194.5). This resulted in an inflation increase of 7.1 percent.

Clarifying Change

The OCC is revising the chart format at 12 CFR 19.240(a) to be more readable. The revised chart separately identifies each statute and the different tiers of penalties provided in each statute (as applicable) rather than combining multiple statutes that assess identical CMPs.

Procedural Issues

1. Notice and Comment Procedure

Under the Administrative Procedure Act (APA), an agency may dispense with public notice and an opportunity for comment if the agency finds, for good cause, that these procedural requirements are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). The Act provides the OCC no discretion in calculating the amount of the civil penalty adjustment. The OCC, accordingly, cannot vary the methodology used to calculate the adjustment or the amount of the adjustment to reflect any views or suggestions provided by commenters. For this reason, the OCC has concluded that notice and comment procedures are unnecessary and that good cause exists for dispensing with them.

2. Delayed Effective Date

The Riegle Community Development and Regulatory Improvement Act of 1994 requires that the effective date of new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall be the first day of a calendar quarter that begins on or after the date the regulations are published in final form. *See* 12 U.S.C. 4802(b)(1). The RCDRIA does not apply to this final rule because the rule merely increases the amount of CMPs that already exist and does not impose any additional reporting, disclosures, or other new requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). *See* 5 U.S.C. 601(2). Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $133 million or more in any one year.[8] Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1532(a).

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

Authority and Issuance

■ For the reasons set out in the preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

■ 2. Section 19.240 is revised to read as follows:

§ 19.240 Inflation adjustments.

(a) The maximum amount of each civil money penalty within the OCC's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as follows:

BILLING CODE 4810–33–P

[5] Pub. L. 108–458, Title VI, section 6303(b), 118 Stat. 3638, 3751 (Dec. 17, 2004).

[6] *See* 12 U.S.C. 1820(k)(6)(A)(ii); 12 CFR part 4, subpart E.

[7] *See* 12 U.S.C. 1820 note and 12 CFR 4.75.

[8] The Unfunded Mandates Reform Act of 1995 sets a threshold of $100 million and requires that threshold to be adjusted annually for inflation. *See* 2 U.S.C. 1532(a). The OCC has calculated that the inflation-adjusted amount for 2009 is $133 million.

U.S. Code Citation	Tier (if applicable)	Adjusted Maximum Penalty (in Dollars)
12 U.S.C. 93(b)	Tier 1 Tier 2 Tier 3	$7,500 37,500 1,375,000
12 U.S.C. 164	Tier 1 Tier 2 Tier 3	2,200 32,000 1,375,000
12 U.S.C. 504	Tier 1 Tier 2 Tier 3	7,500 37,500 1,375,000
12 U.S.C. 1817(j)(16)	Tier 1 Tier 2 Tier 3	7,500 37,500 1,375,000
12 U.S.C. 1818(i)(2)	Tier 1 Tier 2 Tier 3	7,500 37,500 1,375,000
12 U.S.C. 1820(k)(6)(A)(ii)		275,000
12 U.S.C. 1832(c)		1,100
12 U.S.C. 1884		110
12 U.S.C. 1972(2)(F)	Tier 1 Tier 2 Tier 3	7,500 37,500 1,375,000
12 U.S.C. 3110(a)		37,500
12 U.S.C. 3110(c)	Tier 1 Tier 2 Tier 3	2,200 32,000 1,375,000
12 U.S.C. 3909(d)(1)		1,100
15 U.S.C. 78u-2(b)	Tier 1 (natural person) Tier 1 (other person) Tier 2 (natural person) Tier 2 (other person) Tier 3 (natural person) Tier 3 (other person)	7,500 70,000 70,000 350,000 140,000 675,000
42 U.S.C. 4012a(f)(5)	Per violation Per year	385 135,000

(b) The adjustments in paragraph (a) of this section apply to violations that occur after December 10, 2008.

Dated: October 31, 2008.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. E8–26654 Filed 11–7–08; 8:45 am]

BILLING CODE 4810–33–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20836; Directorate Identifier 2005–NM–028–AD; Amendment 39–15730; AD 2008–23–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–200 and 727–200F Series Airplanes; 737–200, 737–200C, 737–300, and 737–400 Series Airplanes; 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP Series Airplanes; 757–200, 757–200CB, and 757–200PF Series Airplanes; and 767–200 and 767–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing transport category airplanes. This AD requires replacing any insulation blanket constructed of polyethyleneteraphthalate (PET) film, ORCON Orcofilm® AN–26 (hereafter ''AN–26''), with a new insulation blanket. This AD results from reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets covered with AN–26, which may contribute to the spread of a fire when ignition occurs from sources such as electrical arcing or sparking. We are issuing this AD to ensure that insulation blankets constructed of AN–26 are removed from the fuselage. Such insulation blankets could ignite and propagate a fire that is the result of electrical arcing or sparking.

DATES: This AD is effective December 15, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 15, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6436; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Summary of the NPRM

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 727–200 and 727–200F series airplanes; 737–200, 737–200C, 737–300, and 737–400 series airplanes; 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP series airplanes; 757–200 and 757–200PF series airplanes; and 767–200 and 767–300 series airplanes. That NPRM was published in the **Federal Register** on April 4, 2005 (70 FR 16986). That NPRM proposed to require removing all insulation blankets within the pressurized areas of the affected airplanes and installing a new insulation blanket meeting the requirements of Section 25.856(a) of Title 14 of the Code of Federal Regulations (CFR) (14 CFR 25.856(a)). That NPRM also proposed to allow operators to develop methods for distinguishing between insulation blankets constructed of AN–26 and other materials. In addition, that NPRM proposed a provision that, if the FAA approves such a method, operators would not be required to remove blankets they determine are not constructed of AN–26.

Related Activities

After issuance of the NPRM, we extended the comment period of the NPRM by 60 days due to the extensive scope and significant potential impact of the NPRM. An NPRM, extending the comment period, was published in the **Federal Register** on June 6, 2005 (70 FR 32738). Subsequently, we decided that more time was necessary for interested parties to continue to evaluate the proposal and to submit additional comments with more specific details concerning issues. An NPRM, reopening the comment period, was published in the **Federal Register** on November 23, 2005 (70 FR 70749).

Differences Between the NPRM and the Final Rule

We have extended the compliance time of the required replacement from 72 months to 96 months. The revised compliance time should minimize the cost impact on operators by allowing more planning time to comply with the requirements of this AD. We also have revised the cost information and note that there is a substantial change in estimated cost due to increased parts and labor costs, reduced number of airplanes, and assumed service change for the future fleet. In addition, we have deleted the reinstallation requirement of paragraph (h)(2) of the NPRM. The reinstallation requirement would have created an undue burden on operators because not all removals of insulation blankets are done at a heavy maintenance visit with the necessary replacement materials available.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the 21 commenters. The significant comments are as follows.

Questioning the Safety Risk of AN–26

Several commenters, such as the Air Transport Association (ATA) on behalf of its members, Boeing, KLM, and Northwest Airlines (NWA), request that we reconsider the NPRM because AN–26 poses a lower safety risk than indicated in the NPRM, and that AN–26 was not considered unsafe during certification.

Boeing states that its in-service events/test data show limited flame spread and no damage to structure/systems due to aged AN–26. Boeing implies that the mitigating actions for the NPRM should be revised to correspond to the low risk presented by the data, which are proportionally associated with the combination of contamination, ignition, and flame propagation.

In addition, Boeing states that the replacement of AN–26 for all locations may not be required due to the isolation of materials from ignition sources or lack of susceptibility to high levels of contamination. NWA agrees with Boeing's conclusion that AN–26 (based on flame propagation characteristics by itself) without contamination is not an unsafe condition (i.e., high-level threat) for airplanes.

Based on our review of the details of the in-service events/test data, we do not agree with Boeing to revise the NPRM to reflect its presented information or with its conclusions about the data. With regard to ignition and propagation, we have examined the incident/event history of fires involving airplanes manufactured between 1981 and 1988 and, in particular, those events that have involved AN–26 thermal/acoustic insulation materials. Results of this examination revealed that flames have propagated on the thermal/acoustic insulation materials initiated from several types of ignition sources such as electrical arc/sparks and lightning strikes. Flight or ground personnel extinguished some of these fires with extinguishing equipment while other fires self-extinguished. It is unknown whether all of these fires would have self-extinguished and how much of the material would have been consumed or if the fire would have spread to other materials. These events took place in several areas of the airplanes, but primarily in inaccessible areas, those that are hidden from view from the passengers and flight crew. The burned areas ranged from a relatively small area (< one ft^2) to a large area (40 ft^2). Some of these events resulted in significant system and/or structural damage to the airplane.

We also do not agree with the commenters suggestions that an unsafe condition only exists if contamination is present. Data from in-service events and tests, conducted by both Boeing and us, support the conclusion that relatively uncontaminated, in-service AN–26 has ignited and resulted in unacceptable flame propagation behavior. As discussed in the ''Background'' section of the NPRM, we have concluded that the flammability characteristics of AN–26 are more a factor of fundamental material properties than a factor of contamination.

Contamination, in many cases, can increase the susceptibility to ignition and flame propagation, although, in certain cases, some forms of contamination actually inhibit the propagation of flames. In addition, as discussed in the ''FAA's Determination and Requirements of the Proposed AD'' section of the NPRM, we issued Flight Standards Information Bulletin for Airworthiness (FSAW) 00–09, ''Special Emphasis Inspection on Contamination of Thermal/Acoustic Insulation,'' effective September 28, 2000, to ensure that operators have procedures defined in their approved maintenance programs for the inspection for contamination and corrective action. Boeing also has revised service letters alerting operators to methods for preventing and removing contamination. The procedures in these documents serve to mitigate the separate risk associated with contamination.

NWA also comments that AN–26 was not considered unsafe at the time of certification, and that we are changing the flammability test for insulation material 20 years after certification.

We do not agree. Whether or not AN–26 meets the certification flammability requirements that were applicable to the affected airplanes is irrelevant to the determination of an unsafe condition. As mentioned in Amendment No. 25–111 (68 FR 45045, July 31, 2003), prior certification standards did not adequately distinguish between acceptable and unacceptable materials. As a result, we did, in fact, change those standards in Amendment No. 25–111, and the old test methods are no longer applicable to thermal/acoustic insulation. As such, our long-range plan is application of Amendment No. 25–111, where material that met the previous standards will be reduced by attrition as required by the associated 14 CFR Part 91 and Part 121 operational rules.

Furthermore, in response to NWA's observation that we are changing test methods to account for electrical arcing, the arc/spark test is only used to assess whether an unsafe condition exists. It is not used as a certification standard. We have determined that the most common ignition threat is electrical arcing/sparking. When AN–26 is subject to arcs and sparks, it ignites and propagates a fire with characteristics unlike other insulation material we have evaluated. These characteristics create the unsafe condition.

KLM and NWA are concerned that in addition to AN–26, there may be additional materials that should be subject to the requirements of the NPRM. KLM states that it received a list of several thermal/acoustic insulation materials from ORCON, the manufacturer of AN–26, that do not comply with 14 CFR 25.856(a).

As discussed in the NPRM, this AD addresses an identified unsafe condition (i.e., insulation blankets constructed of AN–26, if not removed from the fuselage, could ignite and propagate a fire that is the result of electrical arcing or sparking). AN–26 differs from other films in use, except for metallized polyethyleneteraphthalate (MPET) material which has been addressed in other similar rulemaking, in that it is susceptible to propagation of a fire from a small ignition source. Other films, while not necessarily meeting the requirements of 14 CFR 25.856(a), do not have this susceptibility. It is the susceptibility to small ignition sources that creates the unsafe condition.

ATA states that AN–26 is not as unsafe as MPET. ATA states that investigation results of in-service events and the FAA Technical Center's video recording of the tests of insulation blankets constructed of MPET indicate that propagation characteristics of AN–26 is not a safety threat.

We do not agree with ATA's assertion that AN–26 poses a propagation hazard significantly less than that posed by MPET. We have determined that each material is susceptible to ignition and propagation from a small ignition source and thus presents an unsafe condition. The flame propagation characteristics of MPET in a specific test scenario are not a recognizable standard with which to compare other materials, including AN–26, as MPET has not been deemed the baseline material for safety evaluations. For this same reason, we also do not agree that the comparison of propagation characteristics of AN–26 and MPET should be factored into the development of an appropriate compliance time for the required replacement.

Service Information

Several commenters, such as ATA, Continental, and NWA, express concern about the lack of service information in order to comply with the AD. ATA notes that paragraph (f) of the NPRM states that the insulation blankets must be replaced ''using applicable maintenance manual procedures.'' ATA states that such a provision is inadequate, and that the effective date of the AD should be delayed to ensure appropriate service information is available to operators. While preparing for the MPET ADs [1] (hereafter ''MPET ADs''), ATA found that the maintenance manual procedures:

- Describe the fabrication of insulation blankets, but provide no instructions for the removal or installation of insulation blankets; and
- Do not adequately address the wholesale replacement of an insulation blanket system nor provide any

[1] ADs 2000–11–01, amendment 39–11749 (65 FR 34321, May 26, 2000), and 2000–11–02, amendment 39–11750 (65 FR 34341, May 26, 2000).

accounting for assessing or planning the labor or logistical support required to mount the proposed replacement.

In addition, ATA states that having service information with detailed procedures for replacing AN–26 in the flight deck and electronics compartment (areas in which insulation blankets are rarely replaced during the lifetime of an airplane) is necessary to ensure that the electrical systems are not disturbed during the proposed replacement. Without approved service information, ATA also states that the NPRM, in effect, relies on the future development and FAA's approval of operators' equivalent methods, alternative methods of compliance (AMOC), or supplemental type certificates (STCs), or a combination of these methods. ATA points out that it took 9 to 18 months to develop and to get approved 22 STCs for a similar issue (i.e., strengthened flight deck doors).

Continental states that the NPRM does not refer to any approved service information with instructions for inspecting systems that are disturbed during the AN–26 replacement. Without this service information, Continental also states that Boeing, operators, and the FAA will be unable to determine whether there are compliance issues similar to those the FAA previously noted before the issuance of the MPET ADs. Continental concludes that requiring operators to develop their own service information will cause operators and the FAA an undue burden after the AD is released and could cause compliance issues.

As an alternative to extending the effective date of the AD, ATA requests that we consider issuing a supplemental NPRM that proposes a reasonable compliance time once appropriate service information is available. ATA appreciates the reopening/extension of the comment period of the NPRM to evaluate AMOCs; however, ATA notes that the results of the evaluated AMOCs revealed that none of them have a high likelihood of substantially reducing the cost impact of the NPRM. Since no AMOCs have been approved for use, ATA states that any estimate of their economic benefits and impacts would be somewhat speculative. ATA believes that waiting for approved service information will ensure a reasonable cost impact and will ensure the availability of at least one practical method of compliance throughout the compliance time of the AD.

After issuance of the NPRM, we reviewed the following Boeing special attention service bulletins:

TABLE—BOEING SPECIAL ATTENTION SERVICE BULLETINS

Boeing Special Attention Service Bulletin—	Dated—	For model—
727–25–0300	April 30, 2008	727–200 and −200F series airplanes.
737–25–1572	April 30, 2008	737–200, 737–200C, 737–300, and 737–400 series airplanes.
747–25–3429	April 30, 2008	747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SP, and 747SR series airplanes.
757–25–0295	April 30, 2008	757–200, 757–200CB, and 757–200PF series airplanes.
767–25–0411	April 30, 2008	767–200 and 767–300 series airplanes.

The special attention service bulletins describe procedures for an optional one-time general visual inspection to determine if the existing insulation blankets are constructed of AN–26, removal of existing insulation blankets, and installation of new insulation blankets. We have determined that accomplishing the actions specified in those special attention service bulletins is considered an acceptable means of compliance with the requirements of paragraphs (f) and (g) of this AD. Therefore, we have revised paragraphs (f) and (g) of this AD accordingly.

Alternatively, we determined that existing maintenance manual procedures should be sufficient for accessing and replacing AN–26 in the flight deck, as well as the electronic and passenger and cargo compartments. Maintenance manual procedures also provide instructions for restoring disturbed systems and conducting detailed inspections of disturbed wiring. Therefore, we determined that it is possible to do the required replacement in these areas by developing the necessary installation data in conjunction with existing maintenance practices. We also determined that these areas will most likely be accessed during a heavy maintenance check, which would better facilitate replacement of insulation materials; and we have accounted for this in the compliance time.

We also acknowledge that the maintenance manual procedures describe methods for fabricating replacement insulation blankets as well as removal and installation of blankets in several locations throughout the airplane. We also are aware that, through existing maintenance manual procedures, it is possible to utilize existing insulation blankets as templates in conjunction with new thermal/acoustic insulation materials meeting 14 CFR 25.856(a) to create replacement insulation blankets. While some operators may not be equipped or may decide not to manufacture replacement insulation blankets, we are aware that there are resources available in the industry to manufacture and install replacement insulation blankets in almost all locations without specific service information from Boeing.

Furthermore, we are also aware that certain operators and modifiers are developing their own installation data. We support the efforts of these parties to generate potential methods of compliance. However, we have not received any specific proposals to date.

US Airways requests that the NPRM be withdrawn and reissued when approved methods of identifying insulation blankets constructed of AN–26 and service information are available. Boeing, British Airways (BA), Continental, Henderson Projects, FedEx, NWA, and Transport Canada Civil Aviation request that the NPRM be revised to include a method of identifying non-compliant insulation blankets constructed of AN–26. Two commenters specifically request that the first paragraph in the ''FAA's Determination and Requirements of the Proposed AD'' section of the NPRM be revised to include Boeing's AN–26 visual identification flow chart. Without such a method, the two commenters state that operators will be required to get approval from the FAA before installing replacement insulation blankets, which will cause a significant work overload for all respective parties. Another commenter states that Note 1 of the NPRM is not adequate to identify AN–26 and would like to see color pictures and a description of AN–26. Other commenters state that including such a method will help offset the economic impact on operators. One other commenter states that many original insulation blankets have been replaced with locally fabricated insulation blankets, which do not have visible markings.

We acknowledge that operators need a better method to identify insulation blankets constructed of AN–26. We are aware that ORCON used a variety of methods to part-mark the subject materials, and in some cases, there is no part marking at all. We are also aware that more than one material has been qualified to Boeing's material specification during the timeframe AN–26 was used.

We do not agree, however, to include Boeing's AN–26 visual identification flow chart in the current form in the AD. We have determined that the flow chart does not provide an adequate means of identifying insulation blankets constructed of AN–26 and lacks key characteristics necessary to aid personnel. However, Boeing has provided instructions for identifying insulation blankets constructed of AN–26 in the service information described previously.

Need for More Meetings/Central Repository

ATA requests that we form an Aviation Rulemaking Committee (ARC) to coordinate insulation-related initiatives of large scope that may arise in the future. ATA also requests that we work with manufacturers to coordinate the development and publication of a central repository of data showing:

- Thermal/acoustic insulation materials that have passed current flame propagation test standards; and
- Plans to test in-service materials that have not yet been tested.

ATA states that rulemaking applicable to insulation material can have a tremendous impact on labor, out-of-service time and, in particular, the development of methods of compliance and associated service instructions, planning, logistic support, and configuration control, for both production and out-of-production airplanes. ATA further states that experience with insulation blanket rules similar to the NPRM have shown that such initiatives should be regarded as significant, and are candidates for extensive, close, and preferably advance coordination within the industry and the FAA.

We do not agree. We note that data regarding in-service materials are already available from the FAA Technical Center. We have not seen any tendency for aged material to perform differently than new materials. While none of the data suggest that there is a trend toward increased flammability with age, we support further investigation into this issue. However, we do not plan to test additional materials, unless new information surfaces to suggest a need. We do not agree that a central repository of data, whether descriptive or substantiating, is necessary. We have gathered test data for a number of in-service materials, which can be accessed at: *http://www.fire.tc.faa.gov/ppt/materials/Flammability_test.zip*. These data were obtained by the International Aircraft Materials Fire Test Working Group (IAMFTWG) on a strictly voluntary basis. In general, data are proprietary to the applicant, and we cannot disclose those data to the public. We would support an industry initiative wherein design approval holders voluntarily disclose such information.

We do agree that it is necessary to coordinate insulation-related initiatives; however, we do not agree that it is necessary to form an ARC. We, along with several manufacturers and operators, are a member of the IAMFTWG, which studies improvements to flammability standards, specifically those for non-metallic materials within the pressurized portions of an airplane. The group is divided into several task groups, one of which is the Aging/Contamination Task Group. Members of this task group evaluate in-service parts from operators to study contaminants and to determine materials used by manufacturers and operators, and conduct laboratory tests to artificially age various film materials. However, the IAMFTWG is not an FAA-chartered committee and thus does not make specific rulemaking recommendations, nor can we task it to do so. However, we actively participate in IAMFTWG meetings and intend to utilize information provided by this group to determine how contamination may impact the risk of fire and/or fire propagation and also determine if alternative regulatory action may be appropriate. In addition, the potential for forming a working group on aging and contamination insulation materials was formally presented to the Transport Airplane and Engine Issues Group (TAEIG) of the Aviation Rulemaking Advisory Committee. Based on the minimal feedback from the group members, we determined that such a working group is not necessary, and therefore, we do not plan to initiate any activity beyond that in the IAMFTWG.

NWA proposes that we withdraw the NPRM until we can task industry to develop a reasonable resolution to our insulation flammability concerns (i.e., aging and contamination).

We agree that it may be necessary to conduct studies on the effects of contamination on insulation materials. However, we do not agree to withdraw the NPRM until another industry task group can be formed to address aging and contamination outside of current, ongoing activity. We have concluded that the flammability characteristics of AN–26 are more a factor of fundamental material properties than a factor of aging or contamination. As discussed previously, we extended the comment period of the NPRM in June 2005, as well as reopened the comment period in November 2005. During that time, industry was unable to arrive at a common approach or to propose specific AMOCs that are alluded to in comments that were submitted to the NPRM. Any additional delay for further study would be unacceptable, because doing so would allow the unsafe condition to persist.

Compliance Time

BA and Transport Canada Civil Aviation agree with the 72-month compliance time for the replacement required by paragraph (f) of the NPRM.

ABX Air (ABX), ATA, Champion Air, Continental, DHL, FedEx, International Air Transport Association (IATA), KLM, Lufthansa, NWA, UPS, and US Airways request that the 72-month compliance time for the replacement of AN–26 required by paragraph (f) of the NPRM be extended. The commenters propose new compliance times ranging from 96 months to 144 months.

Certain commenters state that such an extension will align with their scheduled maintenance intervals such as a heavy maintenance, 4C-check, C-check (two intervals), or D-check, and will thereby eliminate disruptions in flight schedules. One commenter also states that 72 months would result in an undue maintenance burden. Another commenter states that 72 months would result in unnecessary grounding of airplanes due to the associated cost burden. Others state that such an extension is necessary to offset the economic impact.

Another commenter states a longer compliance time is necessary due to the assertion that AN–26 is not as unsafe as MPET—an insulation subject to an AD with a 60-month compliance time. The commenter notes that investigation results of in service events and FAA Technical Center test data associated with AN–26 indicate that the propagation threat to safety is limited when compared to similar MPET data.

We agree that the 72-month compliance time in paragraph (f) of the NPRM can be extended. Based on the information supplied by the commenters, and in consideration of the impact this type and level of replacement action imposes on the operators and the size of the affected fleet, we have determined that extending the compliance time to 96 months will not adversely affect safety. We acknowledge that our efforts with industry to minimize ignition sources and to reduce contamination on insulation blankets are actions that reduce the risk of fire, and thus are mitigating actions that support the compliance time extension. While these factors partially mitigate the risk and enable us to allow a compliance time that is longer than the 60-month compliance time for the MPET ADs, they do not adequately address the risk of flame propagation without removal or appropriate modification of insulation blankets constructed of AN–26. As a secondary consideration, this extension will allow the required replacement be conducted during a regularly scheduled heavy maintenance visit for the majority of the affected fleet, when the airplanes would be located at a base where special equipment (i.e., special rigs, devices, etc., to facilitate removal and installation of equipment) and trained personnel would be readily available, if necessary. Therefore, we have revised paragraph (f) of this AD to require a compliance time of 96 months.

Delete Freighter Airplanes From the Applicability

DHL requests that freighter airplanes be deleted from paragraphs (c)(1) and (c)(2) of the NPRM, because the risk for casualties in the event of a fire is almost zero on those airplanes.

We do not agree with DHL to exclude freighters or those airplanes that have been converted from a passenger to a freighter configuration from the applicability of this AD. AN–26 is primarily used in areas of airplanes that are unoccupied, behind lining materials, and hidden from view. The risk of an in-flight fire and the propagation of a fire in those areas is essentially the same whether the airplane is equipped to fly passengers or cargo. Therefore, we have made no change to the AD in this regard.

Changes to the Applicability

After issuance of the NPRM, we determined that Model 757–200CB series airplanes are subject to the identified unsafe condition of this AD. Currently, there are no affected Model 757–200CB series airplanes on the U.S. Register. Because the identified unsafe condition is likely to exist or develop on other products of this same type design that could be registered in the United States in the future, we have revised the applicability of this AD to include Model 757–200CB series airplanes. Since no Model 757–200CB series airplanes are affected by this AD, notice and opportunity for public comment before issuing this AD are unnecessary.

Limit Replacement to Cover Film Material, Not Entire Insulation Blanket

Boeing and NWA request that paragraphs (d) and (f) of the NPRM and the ''FAA's Determination and Requirements of the Proposed AD'' section of the NPRM be revised to refer to the replacement of the cover film material only, not the entire insulation blanket. Boeing notes that the FAA has only determined that AN–26 cover film is non-compliant with 14 CFR 25.856(a). Boeing states that requiring replacement insulation blankets to be in full compliance under that rule is unnecessary and places an undue hardship on the airlines and the supply chain for replacement insulation blankets. Boeing also states that most replacement insulation blankets are now available in the supply chain, but the availability is strained to meet production needs that started in September 2005.

For comparison, Boeing points out that the MPET ADs only require replacement of films to remedy the unsafe conditions of those ADs—not tapes, threads, felts, hook/loop, etc., which are not part of the safety issue. In addition, Boeing states that requiring the latest materials for treatments or construction of replacement insulation blankets will slow their installation, which will place an additional burden on industry. Boeing states further that incorporating its suggested change of mandating replacement of AN–26 cover film only will also support alternate mitigation approaches to satisfy the safety issue.

We do not agree with the commenters' requests to limit the required replacement to cover film materials only. Operational rules have been implemented that require thermal/acoustic insulation materials installed as replacements to meet the requirements of 14 CFR 25.856(a). As such, there is significant benefit in defining a consistent standard for this AD both from a level of safety perspective and from a practical standpoint in order to avoid confusion. As stated in the preamble of Amendment No. 25–111, the requirement is also applicable to ''tapes or hook and loop fasteners that are affixed to the film. Research testing has shown that these details can have a pronounced effect on the flame propagation characteristics of the insulation cover material.''

We do not believe that the supply chain for replacement materials will be unnecessarily strained. The compliance time extension is intended to allow for planning and ensuring availability of necessary materials.

In general, film material is intended to provide a level of protection to the insulation batting or ''felt'' from contamination and moisture. We have determined that removing the film alone may introduce undesirable effects such as the breakdown of the insulation or batting material due to the effects of moisture or other agents, which have not been evaluated as part of this AD.

We acknowledge, however, that removal and replacement of AN–26 film cover material and associated affixed details such as hook/loop, threads, etc., with materials compliant with the requirements of 14 CFR 25.856(a) may be an option for consideration of an AMOC should an operator elect to pursue this means versus outright replacement of the blanket assembly. We have made no change to the final rule in this regard.

AMOCs

Transport Canada Civil Aviation requests that the criteria for evaluating and approving AMOCs for the replacement in paragraph (f) of the NPRM be included in the final rule to assist industry in developing such AMOCs.

Boeing requests that we define the acceptance criteria in the AD rather than requiring operators to obtain the criteria from the Manager, Seattle Aircraft Certification Office (ACO). Boeing states that this change, as well as airlines' input on implementation and cost impact, will allow industry to develop solutions.

We partially agree. We agree with the commenters that a description of the criteria and test methods for evaluating AMOCs is needed to reduce the flow time and overall implementation costs of the AD. However, we do not agree that a change is necessary to this AD in this regard. We have developed an FAA document that describes criteria and test methods for evaluating AMOCs. You may view this document at *http://www.fire.tc.faa.gov/materials/AN_26_AMOC.pdf*; or in the AD docket on the Internet at *http://www.regulations.gov.*

Boeing requests that the FAA follow Boeing's AMOC plan for ''Spray-on

Solution,'' which it provided to the FAA in September 2004. In addition, Boeing believes that its plan, approach, and schedule for the overall safety issue aligns with the potential risk level that is apparent from incident analysis and testing. Boeing states that the FAA is aware of the development and progress of its spray-on fire retardant solution, and that when approved, it will be an acceptable remedy to the identified fire propagation condition with AN–26.

Other commenters request that a specific AMOC such as Boeing's spray-on-solution be included in the paragraph (f) of the final rule. Some commenters request that the final rule not be issued until there is an approved AMOC relating to spray-on fire retardants or covering material using existing insulation materials.

We acknowledge that Boeing has been in the process of developing a spray-on fire retardant as an AMOC for the replacement required by this AD. We understand that AMOCs can be valuable to assist operators in complying with ADs. However, Boeing has not submitted its modification to us for approval yet. We do not consider it appropriate to delay issuance of this final rule, since we have determined that an unsafe condition exists and that replacement must be conducted to ensure continued safety. We will work with Boeing or other entities to approve its modification when the development is complete and substantiating data are provided.

Boeing and Continental request that paragraph (h)(1) of the NPRM be revised to allow the Boeing Commercial Airplanes Delegated Compliance Organization (BDCO) to approve AMOC requests, in addition to the Manager, Seattle ACO. Continental states that allowing such delegation to the BDCO will enable operators to rapidly respond to day-to-day operational issues and will lessen the operational burden of the required replacement.

We do not agree with Continental to delegate AMOC approvals to the BDCO, nor do we agree with Boeing to revise our AMOC approval process. In some ADs, we have authorized the BDCO to approve AMOCs for certain structural repairs of cracking that are found during routine maintenance or inspections. These repairs warrant ''routine'' handling. However, we consider the required AN–26 replacement to be complex in nature, and there are potential new and novel approaches for compliance. It is crucial that the FAA be aware of all modifications made to AN–26. It is essential that we have feedback as to the type of modifications being made. Given that possible new relevant issues might be revealed during this process, it is imperative that we have such feedback. We can be assured of this feedback and of the adequacy of the modification methods only by reviewing the modification proposals.

We have determined that standardization and continuity of modification approvals can best be maintained by having one single point of approval for all AMOCs to the requirements of this AD. Since the Manager, Seattle ACO, is accountable for the primary oversight for the actions regarding this AD, it is appropriate to establish and maintain this single point of approval. We have made no change to the AD in response to these comments.

Exclude Certain Areas From Requirement To Replace AN–26

ABX, Boeing, DHL, Florida West International Airways, Lufthansa, and NWA request that paragraph (g) of the NPRM include a provision to exclude areas (i.e., electrical equipment bay, flight deck, adjacent areas, and certain areas behind the smoke barrier) that can be isolated and contained and thus pose a limited fire risk.

Some commenters state that removal of structure or systems to gain access to certain areas may be more detrimental to safety of the airplane. Two commenters also state that some areas containing AN–26 are not accessible after original installation. In addition, the commenters state that their suggested provision will provide for efficient implementation methods and will allow compliance with the NPRM for the entire airplane.

We do not agree with these commenters' rationale to include a provision in paragraph (g) of this AD to exclude certain areas of the airplane. We have evaluated the areas to which the commenters refers and have determined that such areas are accessible. We do acknowledge that certain areas may be easier to access when a major maintenance activity is also occurring in these areas. Proper planning as to the time of blanket replacement to coincide with other major maintenance work, development of proper procedures, and training of maintenance technicians and inspectors will minimize the chance of causing damage to wires or other systems. We will require any operator/modifier that develops its own installation data to include specific instructions to ensure that any displaced wires, systems, and installations are in an airworthy condition after doing the required replacement.

We are not aware of any specific locations on the affected aircraft where AN–26 cannot be accessed after original installation. If there are certain areas that are completely inaccessible, we may consider proposals for AMOCs, in accordance with paragraph (i) of this AD, which include appropriate substantiating data.

Boeing proposes to exclude certain areas up to 20 square feet and has provided test and in-service data intended to support its request. Boeing proposes that an equivalent area to the ''foam block'' be defined to allow exempt areas. Boeing notes that the ''foam block'' is defined by the FAA Technical Center as a realistic in-service fire threat taking into account materials and contamination. Boeing states that the crown test with the ''foam block'' is used by the FAA to determine acceptable flame propagation performance. In addition, Boeing states that the heat released from AN–26 film up to 20 square feet is equivalent to the heat released from a polyurethane foam block.

We do not agree with Boeing that it is appropriate to determine an acceptable amount of square footage of insulation blankets constructed of AN–26 based on the size of the Heptane-soaked ''foam block'' used during FAA tests. The ''foam block'' was established as an appropriate ignition source when doing intermediate and full-scale tests and the resultant development of a suitable test standard capable of evaluating improved thermal/acoustic insulation materials (i.e., 14 CFR part 25, Appendix F, Part VI), but does not constitute a standard for an acceptable area of AN–26. We do not agree that heat release characteristics of the ''foam block'' can be translated to an acceptable area of AN–26. Insulation blankets constructed of AN–26, even in limited amounts, may be ignited via a small ignition source and may propagate flames to other nearby materials and potentially lead to a catastrophic event.

We do not agree that the data, submitted by Boeing, to exclude certain areas (i.e., electrical equipment bay, flight deck, and adjacent areas) up to 20 square feet of AN–26 support its conclusion that leaving AN–26 in place in those areas provides an acceptable level of safety. Those areas are located where potential ignition sources are likely to exist and thus are susceptible to the identified unsafe condition of this AD. We have determined that the data submitted by Boeing and the tests done by the FAA Technical Center support our conclusion that AN–26 is susceptible to ignition and propagation, and has an unacceptable ignition and flame propagation behavior. This AD is intended to eliminate initiation and propagation of an AN–26 fire in areas containing critical equipment where the consequence of a fire would be severe.

ABX states that the NPRM does not have any supporting data to justify total replacement of insulation blankets constructed of AN–26. Based on data it has collected from the Service Difficulty Report (SDR) database, ABX concludes that there is no safety benefit to replacing insulation blankets constructed of AN–26 in areas that have no or minimal ignition sources.

We do not agree with ABX that there are no data to support replacing insulation blankets constructed of AN–26 in the entire airplane. There are several incidents as cited in the NPRM that clearly show the involvement of AN–26 in fire propagation. In addition, we have conducted testing that shows that AN–26 can propagate a fire under realistic conditions, and therefore even materials not near an ignition source can become involved. While we agree that the SDR database does not in itself contain this information, we do, in fact, have sufficient information to conclude that AN–26 throughout the airplane represents an unsafe condition. We have also received a report of burned insulation blankets initiated by chafed wires and a resultant electrical arc which was discovered by maintenance personnel. In addition, potential ignition sources exist throughout the airplane and insulation blankets constructed of AN–26 are located throughout the airplane. As discussed previously, we have determined that insulation blankets constructed of AN–26 in all areas of the affected airplanes must be replaced, unless specific justification for an AMOC is provided.

Lufthansa states that the MPET ADs excluded areas with lower levels of risk for ignition sources.

We find that clarification is necessary. The MPET ADs do not exclude any areas because of perceived lower levels of risk for ignition sources. The preamble of the MPET ADs states that ''MPET insulation blankets in all areas of the affected airplanes must be addressed.'' It also states that ''* * * most [affected airplanes] do not have MPET insulation blankets in the nose section of the airplane. Also, a number of airplanes do not have MPET insulation blankets in the fuselage, but have MPET insulation blankets only on the air conditioning ducting.'' As such, the service information referenced in the MPET ADs identifies certain areas where MPET is not installed, and therefore, those areas are not subject to corrective action. Boeing does not include this specific provision in service information for AN–26, as AN–26 is installed throughout the affected Boeing airplanes. However, we are aware that a number of AMOCs to the MPET ADs, excluding certain areas from replacement, have been approved. For this AD, we have accepted specific exclusion areas, which are identified in the applicable special attention service bulletin described previously for Model 747 and 767 airplanes.

While some of the commenter's proposals to exclude areas of replacement were accompanied by general rationale, the identification of risk mitigating factors and exclusionary details were not specific enough to enable us to approve such proposals other than those identified in the special attention service bulletins. However, we may approve requests for an AMOC under the provisions of paragraph (i) of this AD if operators can show that leaving AN–26 in place is acceptable because other design features prevent ignition and/or propagation of a fire in the specific area requested. Any request to leave AN–26 installed in an airplane must provide justification that the identified unsafe condition has been mitigated, and that an acceptable level of safety is maintained.

Requests to Delete, Revise, or Limit Parts Installation Requirements

ABX, ATA, BA, Boeing, Champion Air, Continental, DHL, IATA, Lufthansa, NWA, and US Airways request that paragraph (h) of the NPRM be deleted or revised for various reasons.

In summary, the commenters state that a requirement to replace insulation blankets constructed of AN–26 that have been removed in a piecemeal fashion would have very little overall safety benefit and would create a significant burden on immediate maintenance actions. In addition, the commenters state that the replacement process should be consistent with the flammability requirements to minimize the impact with airline maintenance processes. They note that we similarly addressed the replacement issue in 14 CFR 25.856 and this existing replacement requirement is sufficient and will apply to in-service airplanes affected by the NPRM.

We partially agree with the commenters' requests. We do not agree that paragraph (h) should be deleted. As stated in the preamble of the NPRM, some international civil aviation authorities have not adopted regulations similar to 14 CFR 91.613(b)(1), 121.312(e)(1), 125.113(c)(1), and 135.170(c)(1) to prohibit insulation blankets constructed of AN–26 from being installed after a certain date. Therefore, we have determined that paragraph (h) of this AD is necessary to inform the international civil aviation authorities of the need to prevent that installation.

However, we do agree to revise paragraph (h)(1) (reidentified as paragraph (h) of this final rule) to eliminate confusion with the regulations noted previously by the commenters. We have revised paragraph (h) of the AD to clarify that insulation blankets constructed of AN–26 may not be installed ''as a replacement'' unless they have been modified to meet the flame propagation requirements of 14 CFR 25.856(a).

In addition, we do agree with the commenters that the proposed conditions for reinstallation of insulation in paragraph (h)(2) would create an undue burden on operators because, as mentioned by some of the commenters, not all removals of insulation blankets are done at a heavy maintenance visit with the necessary replacement materials available. This may cause unnecessary downtime of airplanes to allow for fabrication and installation of the applicable insulation blanket. In consideration of the comments provided on this issue, we have deleted paragraph (h)(2) of the NPRM.

Issue Special Airworthiness Information Bulletin (SAIB)

Boeing requests that we issue a SAIB to inform industry about mitigation approaches for material susceptible to contamination. Boeing suggests that the SAIB reflect certain risks identified in its data and emphasize replacement of significantly contaminated blankets.

We partially agree. We acknowledge that providing information to reduce contamination of insulation blankets in general is needed. However, this information has been provided in FSAW 00–09, as described previously. Therefore, we have determined that no SAIB specific to AN–26 is necessary.

Clarification of Compliance Language

We have slightly revised the wording in paragraph (c)(1) of this AD to reflect currently used compliance language. That is, we have replaced the reference to ''an original Airworthiness Certificate'' with a reference to ''an original standard Airworthiness Certificate.''

Clarification of Unsafe Condition

We have revised the unsafe condition in this AD to state, ''Such insulation blankets could ignite and propagate a fire that is the result of electrical arcing or sparking.'' We find that including the word ''ignite'' further clarifies the unsafe condition of this AD.

Costs of Compliance

This final cost analysis incorporates industry's comments, updated fleet data, and a changed assumption on the future fleet service. This AD affects 669 U.S. registered airplanes (Back Aviation Solutions, Fleet iNET database, January 5, 2007), 41 of which are foreign operated. We estimate compliance cost for the 628 U.S. operated and registered airplanes only. The number of airplanes is reduced from those in the NPRM because of airplane retirements or changes from U.S. to foreign operation. A substantial decrease in estimated cost results from the net change of increasing parts and labor cost, but reduced number of airplanes, and a changed assumption of service for the future fleet.

Boeing commented to the docket that nonrecurring engineering design costs of defining new blanket parts and defining removal and replacement kits were not accounted for in the NPRM. Across the five major models addressed in this AD, Boeing estimates 40,000 part numbers would need to be redefined and replaced. Boeing estimates a minimum of eight hours/part to account for the required engineering, planning, procurement, tooling, and changes in ''Instructions for Continued Airworthiness.'' ATA also noted non-recurring engineering costs should be accounted for and estimated material costs would be over twice the estimates given in the NPRM. UPS commented that the parts costs for a 757–200PF would be approximately triple the estimate given in the NPRM. In response to these comments, we revised estimates of material cost for all affected airplanes and increased our original estimates by 9.7%. More importantly, to account for non-recurring engineering costs, we then doubled our revised parts cost estimates. This results in an estimate of $30.4 million for non-recurring engineering costs (average of $48,392 per airplane times 628 airplanes). If we estimate the engineering wage rate at $100 per hour, this is close to the value of Boeing's estimate of non-recurring engineering costs: 40,000 × 8 × $100 = $32 million, or $50,955 per airplane.

UPS commented that our labor hour estimate was too low for Model 757–200PF airplanes, but ATA commented that our estimates of labor hours were consistent with operator experience with the MPET ADs. Accordingly, we have not changed our labor hour estimates. ATA estimated labor rates would be up to 30 percent higher than the $65 hourly rate given in the NPRM for this final rule. We increased our wage rate estimate to $80 an hour. FedEx noted that the NPRM did not take into consideration additional out-of-service maintenance time necessary for compliance. ATA provided an estimate of an average of 3.6 days of out-of-service time per airplane and also a cost estimate for out-of-service time. We accept ATA's estimate of 3.6 days of out-of-service time per airplane. We estimate out-of-service cost as the opportunity cost of capital: Airplane value [2] × Proportion of a year the airplane is out of service (3.6/365) × Productive return on capital (0.07).[3]

The NPRM overestimated compliance cost by not taking into account the fact that passenger airplanes eventually will be retired from passenger service. This omission was particularly consequential, as the affected airplanes are old, having been delivered into service over the period July 1981 to December 1989. As of January 1, 2009, the youngest airplane in the AD fleet will be 20 years old. Historically, on average airplanes leave passenger service at 25 years, either directly into retirement or for conversion into cargo service. For the purposes of this analysis, we convert all passenger airplanes into cargo airplanes at 25 years. This conversion to cargo service greatly reduces the estimated cost of the AD as our estimate of the direct material and labor costs for cargo airplanes is just 40% of those costs for passenger airplanes. Still, this cost estimate is substantially higher than assuming the airplanes retire at 25 years of service. Given the eight-year compliance period for the final rule, all passenger airplanes in the AD fleet will reach 25 years of passenger service at most three years prior to the end of the compliance period, at which time we assume they will be converted into cargo service.

In the table, ''Cost of compliance,'' the NPRM cost estimates are modified and expanded in accordance with the above discussion. ''Labor hours per airplane'' is unchanged, but ''Labor cost per airplane'' increases because of the increase in the labor hourly rate from $65 to $80. ''Parts cost per airplane'' has been increased by 9.7% to reflect increased material cost. ''Labor costs per airplane'' and ''Parts costs per airplane'' are summed to obtain the column of ''Total remove & replace cost per airplane.'' This cost is multiplied by the number of airplanes [4] to obtain ''U.S. fleet remove & replace cost.'' ''Out-of-service cost per airplane'' [5] is calculated as an opportunity cost of capital and multiplied by the number of airplanes to obtain the following column of ''Total out-of-service cost.'' ''Total out-of-service cost'' added to ''Total remove & replace cost per airplane'' equals ''Total Cost.'' Since we have no information on these maintenance schedules by operator or airplane model, we assume that an equal number of the affected airplanes will undergo heavy maintenance at the end of each of the eight years from the effective date of the AD.[6] Accordingly, we calculate ''Present Value Total Cost'' in the table by discounting ''Total Cost'' by the average (0.7464) of the 7% discount factors for one through eight years.[7] As noted earlier in the preamble, compliance time was increased to 8 years to more closely agree with operators' heavy maintenance schedules.

We estimate the total cost of the final rule to be about $177.7 million, with a present value of about $140.8 million. The $177.7 million total cost is 53 percent of the $334.1 million total cost estimated in the NPRM. Thus, even though our estimated labor rate has increased by 23.1% and we have more than doubled our estimates of parts cost, our estimate of total cost is much lower because of a reduction in the number of affected airplanes and, most importantly, because of the much lower AD costs for cargo airplanes compared to passenger airplanes.[8]

[2] Airliner Price Guide, vol. 57, January 2006.

[3] A 7% return on capital is required by the Office of Management & Budget. See OMB, Circular A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs'', October, 29, 1992, p. 8 (*http://www.whitehouse.gov/omb/circulars/index.html*).

[4] Back Aviation Solutions, Fleet iNET database, January 5, 2007.

[5] For the 767–200 freighter category, airplane values were not available for 26 airplanes. Accordingly, out-of-service cost per airplane was estimated using airplane values for the remaining 16 airplanes in the category.

[6] This assumption is largely consistent with passenger airplanes complying later in the compliance period than cargo airplanes in order to extend their lives in passenger service to 25 years.

[7] OMB, Circular A–94, p. 8.

[8] The cost of the rule may be somewhat lower than estimated to the extent that airplanes go directly into retirement at age 25 rather than converting to cargo service as assumed here. Moreover, even if an old airplane is not due for retirement, the operator will still retire if more economical than compliance, in which case the costs of the rule will also be less than assumed here.

TABLE—COST OF COMPLIANCE

Model	Remove and replace parts & labor cost						Out-of-service cost		Total cost	Present value total cost	Total cost per AP
	Mechanic hours per airplane	Labor cost per airplane	Parts cost per airplane	Total remove & replace cost per AP	Number of APs	U.S. fleet remove & replace cost	Out-of-service cost per AP	Total out-of-service cost			
727–200 (& variants)	1,618	$129,440	$69,966	$199,406	39	$7,776,834	$1,354	$52,823	$7,829,657	$5,844,153	$200,760
737–200, 737–200C, 737–300, 737–400 (& variants)	1,483	118,640	64,136	182,776	319	58,305,544	3,444	1,098,651	59,404,195	44,340,023	186,220
747–100, 747–200, 747–300, 747–400, 747SR, 747SP (& variants)	5,933	474,640	256,542	731,182	42	30,709,644	7,414	311,382	31,021,026	23,154,476	738,596
757–200 (& variants)	2,256	180,480	97,544	278,024	120	33,362,880	5,946	713,491	34,076,371	25,435,023	283,970
767–200 and 767–300 (& variants)	3,236	258,880	139,932	398,812	108	43,071,696	6,636	716,702	43,788,398	32,684,199	405,448
Total/weighted average	2,238 wt. ave.	179,054 wt. ave.	96,785 wt. ave.	275,839 wt. ave.	628 total	173,226,598 total	4,607 wt. ave.	2,893,050 total	176,119,648 total	131,457,874 total	280,445 wt. ave.

Explanation of Change to Paragraph (f)(1) of This AD

We have revised paragraph (f)(1) of this AD to remove reference to the ''applicable maintenance manual procedures.'' Instead, paragraph (f)(1) of this AD specifies to ''Remove all insulation blankets from the pressurized areas of the fuselage and install new insulation blankets using a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.'' Operators should note that while their existing maintenance manuals should be sufficient for accomplishing the actions required by paragraph (f)(1) of this AD, they must contact the Manager, Seattle ACO, for information regarding approval of these procedures for compliance with paragraph (f)(1) of this AD.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Final Regulatory Flexibility Analysis

A. Introduction and Purpose of This Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are seriously considered. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

We determined that this final rule will have a significant economic impact on a substantial number of small entities and, accordingly, as required by section 603(a) of the RFA, we prepared and published an initial regulatory flexibility analysis (IRFA) as part of the NPRM for this final rule (70 FR 16986, April 4, 2005). Section 604 of the RFA also requires an agency to publish a final regulatory flexibility analysis (FRFA) in the **Federal Register** when issuing a final rule. Section 604(a) requires that each final regulatory flexibility analysis contain:

- A succinct statement of the need for, and objectives of, the rule;
- A summary of the significant issues raised by the public comments in response to the IRFA, a summary of agency's assessment of such issues, and a statement of any changes made to the NPRM resulting from such comments;
- A description of and an estimate of the number of small entities for which the final rule will apply;
- A description of the projected reporting, recordkeeping and other compliance requirements of the final rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the final rule considered by the agency which affect the impact on small entities was rejected.

B. Need for and Objectives of the Final Rule

We are mandating a new AD for certain Boeing transport category airplanes. The AD will require air operators to remove and replace insulation blankets made of AN–26 with new insulation blankets. The AD is prompted by reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets covered with AN–26. Following the reports of in-flight and ground fires, the airplane manufacturer and the FAA undertook extensive investigations and flammability tests. Even though AN–26 met the certification standards in 1981, the results of these flammability tests showed that AN–26 will propagate a fire when subjected to electrical arcing and sparks.

We are issuing this AD to ensure that operators remove insulation blankets made of AN–26 from the fuselage. We previously issued similar ADs on another insulation material that affected certain McDonnell Douglas and Aerospatiale model airplanes.

C.1.A. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made to the NPRM Resulting From Such Comments

C.2.A. Description of the Steps the Agency Has Taken To Minimize a Significant Economic Impact on Small Entities and Why Other Significant Alternatives to the Final Rule That Affect Small Entities Were Rejected

There were no responses to the IRFA, but there were many comments to the NPRM itself, which have relevance for small and large entities alike. In response to these comments, the FAA made major changes to the NPRM that significantly reduced the economic impact on the affected firms.

Twelve commenters, including one small firm (included in our data analysis below), requested we extend the compliance time from the proposed 6 years to 8 to 12 years, some noting that an increased compliance time would more closely correspond to heavy maintenance schedules (when all insulation blankets are removed). As discussed in the preamble to the final rule, we have increased the compliance time to 8 years. This reduces the economic impact of the final rule in two ways. First, it increases the likelihood that a firm will be able to comply with the final rule at the time of a scheduled heavy maintenance check, thereby minimizing out-of-service time. Second, it allows the average firm to delay compliance, thereby reducing the discounted cost of the final rule. If we maintain our assumption that an equal number of firms will undergo heavy maintenance in each year of the compliance period, then an increase in the compliance period reduces the average present-value discount factor from 0.8468 to the 0.7464 used in our analysis, thereby reducing the present value cost of the final rule by $(.8468 - .7464)/.8468 = 11.1\%$.

Paragraph (h)(2) of the NPRM proposed that any insulation blanket removed within six months of the final rule's effective date could not be reinstalled unless it was compliant with the safety standards of this final rule. Several commenters stated that this provision was impractical and imposed an undue burden. In particular, the small firm noted that:

''* * * as a supplemental carrier, our aircraft frequently operate away from a maintenance base for extended periods. The requirements of paragraph (h)(2) could generate significant out of service time if a blanket has to be removed while the aircraft is away from base since a replacement blanket would not be readily available.''

As discussed in the preamble to the final rule, we agree with the commenters that the reinstallation provision would impose an undue burden. We have deleted paragraph (h)(2) of the NPRM.

The FAA believes there are no currently available additional alternatives to the final rule that would allow the safety objectives of the final rule to be achieved.

For a complete summary of public comments and our responses, please see the preamble to the final rule.

D. A Description of and an Estimate of the Number of Small Entities for Which the Final Rule Will Apply

To estimate the number of small entities, we first identified all U.S.-operated affected civilian airplanes from a commercial fleet data provider (BACK Aviation Solutions, Fleet-iNET database, November 20, 2006). Using information provided by company Web sites and other Internet sources, we removed large commercial operators and commercial operators that are subsidiaries of firms larger than the Small Business Administration (SBA) size standard for the North American Industry Classification System (NAICS) industry in question.[9] For example, for Atlas Air, Inc., the number of employees is 1220—below the 1500 employee threshold for the NAICS air transportation industries, in one of which it operates (''Nonscheduled Chartered Freight Air Transportation''). Atlas Air, however, is a subsidiary of Atlas Air Worldwide Holdings (AAWH), which has 2007 employees.[10] As 2007 employees exceed the SBA threshold, we did not include Atlas Air as a small entity.

Following this process, we ended up with 45 firms. From information on firm Web sites or from other Internet sources, we were able to classify most of these 45 firms by NAICS industry. For 15 firms, which constitute most of the firms classified in four NAICS air transportation industries (see table, ''Possible small firm operators affected by the final rule by NAICS industry''), we were able to find employment data showing that they were small by the SBA size standard for these industries (upper bound of 1500 employees). Although we have no size evidence for the remaining 30 firms, we suspect that many are small by SBA size standards. We believe a substantial number of small entities, in particular economic activities, are affected by this final rule.

TABLE—POSSIBLE SMALL FIRM OPERATORS AFFECTED BY THE FINAL RULE BY NAICS INDUSTRY

Operator	Number APs	Number of employees	NAICS industry
Aviation Technologies Inc. (PA–USA)	1	....	336413—Oth. A/C Part & Auxiliary Equip. Man.
Ameristar Jet Charter Inc	2	160	481111—Scheduled Passenger Air Transportation.
Maxjet Airways	3	....	481111—Scheduled Passenger Air Transportation.
Ryan International Airlines	2	649	481111—Scheduled Passenger Air Transportation.
Sierra Pacific Airlines	1	32	481111—Scheduled Passenger Air Transportation.
Kitty Hawk Aircargo	3	201	481112—Scheduled Freight Air Transportation.
Northern Air Cargo	4	225	481112—Scheduled Freight Air Transportation.
Champion Air	5	739	481211–Nonscheduled Chartered Passenger Air Transp.
Gold Transportation Inc	1	....	481211–Nonscheduled Chartered Passenger Air Transp.
Omega Air Holdings DBA Focus Air	3	151	481211–Nonscheduled Chartered Passenger Air Transp.
Pace Airlines	4	549	481211–Nonscheduled Chartered Passenger Air Transp.
Sky King Inc. (CA–USA)	2	75	481211–Nonscheduled Chartered Passenger Air Transp.
Vision Airlines	1	....	481211–Nonscheduled Chartered Passenger Air Transp.
Wedge Aviation Inc	1	....	481211–Nonscheduled Chartered Passenger Air Transp.
Astar Air Cargo	6	1023	481212–Nonscheduled Chartered Freight Air Transp.
Capital Cargo International Airlines	3	188	481212–Nonscheduled Chartered Freight Air Transp.
Cargo 360	3	....	481212–Nonscheduled Chartered Freight Air Transp.
Cargo Aircraft Management (all entries)	5	....	481212–Nonscheduled Chartered Freight Air Transp.
Evergreen International Airlines	3	394	481212–Nonscheduled Chartered Freight Air Transp.
Kalitta Air	3	786	481212–Nonscheduled Chartered Freight Air Transp.
Southern Air (CT–USA)	4	179	481212–Nonscheduled Chartered Freight Air Transp.
Tradewinds Airlines (NC–USA)	1	263	481212–Nonscheduled Chartered Freight Air Transp.
Celtic Capital Corporation (all entries)	3	....	522298—All Other Non-Depository Credit Intermediation.
Aerolease Financial Group Inc. (all entries)	1	....	532411—Comm'l Air . . . Transp. Equip. Rental & Leasing.
Aeroturbine Inc. (all entries)	1	....	532411—Comm'l Air . . . Transp. Equip. Rental & Leasing.
Automatic LLC (all entries)	1	....	532411—Comm'l Air . . . Transp. Equip. Rental & Leasing.
Aventura Aviation LLC (all entries)	2	....	532411—Comm'l Air . . . Transp. Equip. Rental & Leasing.
Echelon International Corporation	1	....	532411—Comm'l Air . . . Transp. Equip. Rental & Leasing.
First Chicago Leasing Corporation (all entries).	1	....	532411—Comm'l Air . . . Transp. Equip. Rental & Leasing.
GA Telesis LLC	2	....	532411—Comm'l Air . . . Transp. Equip. Rental & Leasing.
JT Power LLC (all entries)	2	....	532411—Comm'l Air . . . Transp. Equip. Rental & Leasing.
Pegasus Capital Corporation (all entries)	5	....	532411—Comm'l Air . . . Transp. Equip. Rental & Leasing.
Nomads Inc.	1	....	561520—Tour Operators.
NBA Orlando Magic	1	....	711211—Sports Teams and Clubs.
A & W Aeronautics Services Inc.	1		
AA 767 LLC	1		
Apollo Aviation Capital LLC (all entries)	1		

[9] U.S. Small Business Administration. Table of Small Business Size Standards Matched to North American Industry Classification System Codes, July 21, 2006.

[10] The employment figures for Atlas Air and AAWH are for 2005.

TABLE—POSSIBLE SMALL FIRM OPERATORS AFFECTED BY THE FINAL RULE BY NAICS INDUSTRY—Continued

Operator	Number APs	Number of employ-ees	NAICS industry
Aviation Finance Group LLC	1		
BCM Majestic Corporation	1		
Blackwater USA LLC (all entries)	1		
IDM Aviation Services LLC (all entries)	1		
Jet Partners LLC (NY–USA)	3		
Leading Edge Group LLC	2		
RPK Capital Management Group LLC (all entries).	1		
WP Supply Corporation	1		
Total	96		

Sources: 1. List of firms & number of affected airplanes—Back Aviation Solutions, Fleet iNET database, November, 20, 2006. 2. Employment data—Ameristar Jet Charter, *http://www.ameristar.com;* Kalitta Air & Southern Air: *http://www.transtat.bts.gov,* Air Carrier Financial Reports (Form 41 Financial Data), Schedule P10. All others—*http://www.bts.gov/Programs,* Airline Date and Statistics, Number of Employees, Certified Air Carriers (Full-time and Part-time).

E. Reporting, Recordkeeping, and Other Compliance Requirements

We expect that small entities will incur little or no new reporting and recordkeeping requirements as a result of this final rule. Boeing will incur substantial reporting and recordkeeping costs, but is not a small entity.

This AD will require compliance from operators of large commercial transport category Boeing Model 727, 737, 747, 757, and 767 airplanes having an original standard Airworthiness Certificate or original Export Certificate of Airworthiness issued between July 1981 and December 1988 inclusive. The AD also applies to five specific Boeing Model 747–400 airplanes delivered in 1989.[11]

The AD requires that operators of affected Boeing airplanes replace insulation blankets made of AN–26 with new insulation blankets complying with 14 CFR part 25.856(a). As shown in the ''Cost of Compliance'' section of the final rule, this operation requires thousands of labor hours and, consequently, is an expensive operation that will have a significant economic impact on the substantial number of small firms we have identified above. That impact is documented and analyzed below.

1. Economic Impact on Small Operators Assessed With Financial Data

In our analysis of the economic impact of the final rule on small entities, we were restricted to 14 of the 45 potential small entities owing to the availability of Department of Transportation financial data for air transportation operators. These operators are 14 (of the 15) operators identified in table, ''Small firm operators affected by the final rule by NAICS industry,'' as small entities based on employment. We first incorporate into the analysis the final rule's 8-year compliance time, a period specified to closely agree with airplane heavy maintenance schedules. Since we have no information on these maintenance schedules by operator or airplane model, we assume that an equal number of affected airplanes will undergo heavy maintenance at the end of each of the eight years from the effective date of the final rule.[12] Accordingly, we calculate the variable ''Present Value AD Cost'' in the table by discounting ''AD Cost'' [13] by the average (0.7464) of the 7% discount factors for one through eight years.[14] As we noted previously, we reduced the economic impact of the final rule by extending the compliance time from six to eight years. That reduced impact is reflected here in a lower Present Value AD Cost.

The last column of table, ''Financial data by small operator for assessing the economic impact of the final rule,'' shows that Present Value AD Cost as a percentage of Operating Revenues is 1% or greater for 8 of the 14 operators (and as high as 13.1%). The median impact is 1.0% of Operating Revenues. We sort the table by Operating Revenue to demonstrate the economic impact tends to be higher for the smallest of the small operators. We should note that these percentages do not represent a continuous impact on operating revenues. Rather, they measure the economic impact of the final rule as a one-time capital cost relative to the financial size of the operators.

TABLE—FINANCIAL DATA BY SMALL OPERATOR FOR ASSESSING THE ECONOMIC IMPACT OF THE FINAL RULE

Airline	Type	Employment [1]	Op. Revenue ($ 000) [2]	AD cost [3]	Present value AD cost ($)	PV AD cost/ operating revenue (percent)
Kitty Hawk Aircargo	C	201	3,799	558,660	416,991	11.0
Omega Air Holdings dba Focus Air	C	151	12,634	2,215,788	1,653,891	13.1
Sierra Pacific Airlines	P	32	12,967	186,220	138,997	1.1
Sky King Inc	P	75	18,535	372,440	277,994	1.5
Northern Air Cargo Inc	C	225	45,440	744,880	555,988	1.2

[11] Boeing Model 747–400 airplanes with serial numbers 23719, 23720, 23814, 23816–23820, 23999, 24061, and 24062.

[12] As noted in the ''Cost of Compliance'' section of this rule, this assumption is largely consistent with passenger airplanes complying later in the compliance period than cargo airplanes in order to extend their lives in passenger service to 25 years.

[13] AD Cost is for the affected fleet of each operator and is calculated using cost per airplane from the ''Costs of Compliance'' section.

[14] A 7% discount rate is required by the Office of Management & Budget. See OMB, Circular A–94, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs'', October, 29, 1992, p. 8 (*http://www.whitehouse.gov/omb/circulars/index.html*).

TABLE—FINANCIAL DATA BY SMALL OPERATOR FOR ASSESSING THE ECONOMIC IMPACT OF THE FINAL RULE—Continued

Airline	Type	Employment [1]	Op. Revenue ($ 000) [2]	AD cost [3]	Present value AD cost ($)	PV AD cost/ operating revenue (percent)
Capital Cargo International	C	188	46,913	602,281	449,550	1.0
Pace Airlines	P	549	57,160	842,630	628,949	1.1
Southern Air Inc	C	179	59,614	2,954,383	2,205,188	3.7
Tradewinds Airlines	C	263	60,848	738,596	551,297	0.9
Champion Air	P	739	142,301	1,003,802	749,250	0.5
Ryan International Airlines	P	649	157,888	567,940	423,917	0.3
Astar Air Cargo Inc	C	1023	331,929	1,204,563	899,100	0.3
Kalitta Air LLC	C	786	372,546	2,215,788	1,653,891	0.4
Evergreen Int'l Inc	C	394	392,103	2,215,788	1,653,891	0.4
		....	1,714,676 Total	16,423,758 Total	12,258,895 Total	1.0 Median

[1] Employment data is for 2005.
[2] Op. Revenue is the average for 2003–2005, but for Omega Air Holdings is the 2005 value only.
[3] AD Cost is for the affected fleet of each operator and is calculated using cost per airplane from the "Costs of Compliance" section of this final rule. See table, "The cost of the final rule relative to the value of the affected fleet by operator."
Note: The discount factor for AD Cost is 0.7464, the average of the 7% discount factors for Years 1 through 8 from the effective date of the AD.
Sources: 1. Employment data—Kalitta Air & Southern Air: *http://www.transtat.bts.gov*, Air Carrier Financial Reports (Form 41 Financial Data), Schedule P10. All others—*http://www.bts.gov/Programs*, Airline Date and Statistics, Number of Employees, Certified Air Carriers (Full-time and Part-time). 2. Operating Revenue—*http://www.transtat.bts.gov*, Air Carrier Financial Reports (Form 41 Financial Data), Schedules P1.1 & P1.2.

2. Economic Impact on Small Operators Assessed With Affected Fleet Values

Since, as noted previously, the costs of this final rule occur as a one-time capital cost, another way to assess the economic impact of the final rule is to measure the costs of the final rule relative to the capital value of the airplanes the final rule affects. Table, ''The cost of the final rule relative to the value of the affected fleet by operator,'' lists the 14 operators, the number of affected airplanes, AD Cost per airplane, Total AD Cost, and Affected Fleet Value. The key variable in that table is Affected Fleet Value, which sums affected airplane values for each operator. These values were obtained from the Airliner Price Guide, vol. 57, January 2006. That table shows that AD Cost as a percentage of Affected Fleet Value is high, with a median value of 12.2 percent and values ranging as high as 32.9 percent.[15] Both measures of the cost of compliance—discounted AD cost relative to operating revenue (table, ''Financial data by small operator for assessing the economic impact of the final rule'') and AD cost relative to affected fleet value (table, ''The cost of the final rule relative to the value of the affected fleet by operator'')—indicate that this final rule will have a significant economic impact on a substantial number of small entities.

TABLE—THE COST OF THE FINAL RULE RELATIVE TO THE VALUE OF THE AFFECTED FLEET BY OPERATOR

Operator	Type	Equipment type (LAR code) [3]	Number AP	AD Cost/AP ($)	Total AD cost ($)	Affected fleet value ($ mil) [2]	AD cost/fleet value (percent)
Astar Air Cargo	C	Boeing 727–200F	6	200,760	1,204,563	7.27	16.6
Capital Cargo Int'l Airlines	C	Boeing 727–200F	3	200,760	602,281	3.27	18.4
Champion Air	P	Boeing 727–200	5	200,760	1,003,802	3.05	32.9
Evergreen International Airlines.	C	Boeing 747–200B/SCD	3	738,596	2,215,788	30.44	7.3
Kalitta Air	C	Boeing 747–200B (2), −200B/SCD(1).	3	738,596	2,215,788	14.44	15.3
Kitty Hawk Air Cargo	C	Boeing 737–300F	3	186,220	558,660	22.33	2.5
Northern Air Cargo	C	Boeing 737–200 (3), 200C/F (1).	4	186,220	744,880	3.52	21.2
Omega Air Holdings DBA Focus Air.	C	Boeing 747–200B/SCD (2), −300/SCD (1).	3	738,596	2,215,788	24.68	9.0
Pace Airlines	P	Boeing 737–200 (2), −300 (1); 757–200 (1).	4	210,657 [1]	842,630	14.25	5.9
Ryan International Airlines	P	Boeing 757–200	2	283,970	567,940	15.42	3.7
Sierra Pacific Airlines	P	Boeing 737–200	1	186,220	186,220	0.84	22.2
Sky King Inc. (CA–USA)	P	Boeing 737–200	2	186,220	372,440	1.72	21.7
Southern Air (CT–USA)	C	Boeing 747–200B/SCD (2), −200F (2).	4	738,596	2,954,383	33.72	8.8
Tradewinds Airlines (NC–USA).	C	Boeing 747–200B/SCD	1	738,596	738,596	8.42	8.8

[15] Relatively high Total AD Cost/Affected Fleet Value percentages may reflect low airplane values. Low airplane values suggest airplanes may retire before the compliance deadline, thus allowing operators to avoid or reduce compliance cost. See discussion in Section 4.

TABLE—THE COST OF THE FINAL RULE RELATIVE TO THE VALUE OF THE AFFECTED FLEET BY OPERATOR—Continued

Operator	Type	Equipment type (LAR code) [3]	Number AP	AD Cost/AP ($)	Total AD cost ($)	Affected fleet value ($ mil) [2]	AD cost/fleet value (percent)
Total/Average			44	376,028 (wt. avg.)	16,545,237 (total)	183.37 (total)	12.2 (median)

[1] Cost/AP for Pace Airlines is weighted average of 737s and 757 costs.

Pace Airlines	P	Boeing 737–200 and −300	3	186,220	558,660
Pace Airlines	P	Boeing 757–200	1	283,970	283,970

[2] Affected Fleet Value is the sum, by small operator, of the values of affected airplanes. Airplane values were obtained from the Airliner Price Guide, vol. 57, January 2006.
[3] Equipment Type & number of airplanes were obtained from Back Aviation Solutions, Fleet iNET database, January 17, 2007.

3. Disproportionality Analysis

Disproportionality analysis addresses the question of whether small entities bear a larger compliance burden than larger entities. Large operators may be able to negotiate better pricing from outside sources for purchase, installation, and inspection of insulation blankets. We do not have the data that would allow us to assess that potential advantage. Data are readily available, however, to calculate the percentage of operators' airplanes affected by this final rule. We use this simple measure to compare the equipment compliance burden of the small operators with the 15 large airline operators affected by the final rule. One small operator, Maxjet Airways, was added to the small operator list, so as to have equal-sized small and large comparison groups.[16] The data are shown in table, ''Proportionality analysis using the percentage of the fleet affected by the final rule, by small and large operators,'' which sorts the data by Affected Fleet as a percentage of Total Fleet for both small and large operators. As measured by this variable, small operators generally have a higher compliance burden than large operators—a result summarized in the higher mean percentage (38% vs. 29%) and much higher median percentage (31% vs. 17%) for small operators.

TABLE—PROPORTIONALITY ANALYSIS USING THE PERCENTAGE OF THE FLEET AFFECTED BY THE FINAL RULE, BY SMALL AND LARGE OPERATORS

Small operator	Affected fleet	Total fleet	Affected fleet/total fleet (percent)	Large operator	Affected fleet	Total fleet	Affected fleet/total fleet (percent)
Kitty Hawk Air Cargo	3	32	9.4	Alaska Airlines	2	93	2.2
Kalitta Air	3	20	15.0	American Airlines	31	374	8.3
Astar Air Cargo	6	31	19.4	United Parcel Service	15	148	10.1
Ryan International Airlines	2	10	20.0	United Air Lines	40	310	12.9
Capital Cargo Int'l Airlines	3	14	21.4	Atlas Air	3	23	13.0
Evergreen Int'l Airlines	3	14	21.4	Continental Airlines	48	366	13.1
Tradewinds Airlines (NC–USA).	1	4	25.0	Hawaiian Airlines	4	29	13.8
Champion Air	5	16	31.3	Federal Express	18	105	17.1
Sky King Inc. (CA–USA)	2	6	33.3	Southwest Airlines	83	479	17.3
Southern Air (CT–USA)	4	9	44.4	Delta Air Lines	72	319	22.6
Pace Airlines	4	8	50.0	US Airways	41	113	36.3
Sierra Pacific Airlines	1	2	50.0	Northwest Airlines	44	114	38.6
Northern Air Cargo	4	7	57.1	Aloha Airlines	13	24	54.2
Omega Air Holdings DBA Focus Air.	3	4	75.0	America West Airlines [1]	29	39	74.4
Maxjet Airways	3	3	100.0	ABX Air	38	38	100.0
Totals	47	180		Totals	481	2574	
Median			31.3	Median			17.1
Mean			38.2	Mean			28.9

[1] American West Airlines merged with U.S. Airways on September 27, 2005. A merger of the FAA operating certificates was expected in 2007.
Source: Back Aviation Solutions, Fleet iNET database, December 5, 2006.
Note: Medians and means are column averages. Affected Fleet/Total Fleet for all small operators is 47/180 = 26.1% compared with 481/2574 = 18.7% for all large operators. These figures are equivalent to weighted means of the Affected Fleet/Total Fleet percentages with the operator's total fleet numbers as weights. As an average of the column of percentages, the unweighted mean corresponds to the median, and more appropriately reflects the situation of the typical operator in its group.

[16] We identified Maxjet Airways as a highly likely small entity by Maxjet's small total fleet size compared with other small operators.

4. Conclusion on Economic Impact

On the basis of our analysis in sections E.1–E.3 above, we conclude this AD will have a significant economic impact on a substantial number of firms.[17, 18]

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. The statute does not consider legitimate domestic objectives, such as safety, as unnecessary. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. We are issuing this final rule because of a known safety problem and thus the AD is not considered an unnecessary obstacle to international trade.

Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. The Act deems such a mandate to be a ''significant regulatory action.'' We currently use an inflation-adjusted value of $136.1 million.

This AD does not contain such a mandate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866; and

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2008–23–09 Boeing: Amendment 39–15730. Docket No. FAA–2005–20836; Directorate Identifier 2005–NM–028–AD.

Effective Date

(a) This airworthiness directive (AD) is effective December 15, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing airplanes, certificated in any category, specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Boeing airplanes listed in Table 1 of this AD, having an original standard Airworthiness Certificate or original Export Certificate of Airworthiness issued between July 1981 and December 1988 inclusive.

TABLE 1—APPLICABILITY OF CERTAIN AIRPLANES

Model
727–200 and 727–200F series airplanes.
737–200, 737–200C, 737–300, and 737–400 series airplanes.
747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes.
757–200, 757–200CB, and 757–200PF series airplanes.
767–200 and 767–300 series airplanes.

(2) Boeing Model 747–400 series airplanes, serial numbers 23719, 23720, 23814, 23816, 23817, 23818, 23819, 23820, 23999, 24061, and 24062.

Unsafe Condition

(d) This AD results from reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets covered with a specific polyethyleneteraphthalate (PET), ORCON Orcofilm® AN–26 (all variants, including AN–26, AN–26A, and AN–26B), hereafter referred to as ''AN–26,'' which may contribute to the spread of a fire when ignition occurs from sources such as electrical arcing or sparking. We are issuing this AD to ensure that insulation blankets constructed of AN–26 are removed from the fuselage. Such insulation blankets could ignite and propagate a fire that is the result of electrical arcing or sparking.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Replacement

(f) Except as provided in paragraph (g) of this AD, within 96 months after the effective date of this AD, do the actions specified in paragraph (f)(1) or (f)(2) of this AD.

(1) Remove all insulation blankets from the pressurized areas of the fuselage and install new insulation blankets using a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. The new insulation blankets must comply with 14 Code of Federal Regulations (CFR) 25.856(a). The areas where the affected insulation blankets are installed include, but are not limited to, the following areas:

(i) Crown area of the airplane;

(ii) Areas behind flight deck panels and circuit breaker panels;

(iii) Areas behind sidewalls, lavatories, closets, and galleys;

(iv) Cargo compartment areas;

(v) Air ducting;

[17] The cost of the rule may be somewhat lower than estimated to the extent that airplanes go directly into retirement at age 25 rather than converting to cargo service as assumed here. Even if an old airplane is not due for retirement, the operator will still retire if more economical than compliance, in which case the costs of the rule will also be less than assumed here.

[18] In addition to the lower Present Value AD Cost discussed in Section E.1, another benefit of the extended compliance time, especially to small operators, is the increased economic feasibility of retirement or freighter conversion as an alternative to compliance.

(vi) Waste and water tubing; and

(vii) Areas attached to the underside of floor panels.

(2) Remove the existing fuselage insulation blankets and install new insulation blankets, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in Table 2 of this AD.

TABLE 2—BOEING SPECIAL ATTENTION SERVICE BULLETINS

Boeing Special Attention Service Bulletin—	Dated—	For model—
(i) 727–25–0300	April 30, 2008	727–200 and –200F series airplanes.
(ii) 737–25–1572	April 30, 2008	737–200, 737–200C, 737–300, and 737–400 series airplanes.
(iii) 747–25–3429	April 30, 2008	747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SP, and 747SR series airplanes.
(iv) 757–25–0295	April 30, 2008	757–200, 757–200CB, and 757–200PF series airplanes.
(v) 767–25–0411	April 30, 2008	767–200 and 767–300 series airplanes.

Exception

(g) The actions described in paragraph (f) are not required for any insulation blanket that is determined not to be constructed of AN–26, using an identification method approved by the Manager, Seattle Aircraft Certification Office (ACO), or in accordance with Appendix A of the applicable service bulletin specified in Table 2 of this AD.

Note 1: Insulation material that is part-marked with a date of manufacture indicating that it was manufactured before July 1981 or after December 1988 is not constructed of AN–26.

Parts Installation

(h) As of the effective date of this AD, no person may install any insulation blanket constructed of AN–26 as a replacement unless it has been modified to comply with 14 CFR 25.856(a), in accordance with a method approved by the Manager, Seattle ACO.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle ACO, ATTN: Shannon Lennon, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6436; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(j) You must use the applicable service information contained in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com*; Internet *https://www.myboeingfleet.com*.

(3) You may review copies of the service information that is incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Boeing Special Attention Service Bulletin—	Dated—
727–25–0300	April 30, 2008.
737–25–1572	April 30, 2008.
747–25–3429	April 30, 2008.
757–25–0295	April 30, 2008.
767–25–0411	April 30, 2008.

Issued in Renton, Washington, on October 24, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–26352 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1166; Directorate Identifier 2008–NM–179–AD; Amendment 39–15728; AD 2008–23–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Boeing Model 737 airplanes. This AD requires revising the airplane flight manual to include a new flightcrew briefing that must be done before the first flight of the day and following any change in flightcrew members, and to advise the flightcrew of this additional briefing. This AD results from continuing reports that flightcrews have failed to recognize and react properly to the cabin altitude warning horn. We are issuing this AD to prevent failure of the flightcrew to recognize and react properly to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body) and consequent loss of airplane control.

DATES: This AD is effective November 25, 2008.

We must receive comments on this AD by January 9, 2009.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Gregg Nesemeier, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6479; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On June 15, 2006, we issued related AD 2006–13–13, amendment 39–14666 (71 FR 35781, June 22, 2006). (A correction of that AD was published in the **Federal Register** on July 3, 2006 (71 FR 37980).) That AD applies to all Boeing Model 737 airplanes. That AD requires revising the airplane flight manual (AFM) to advise the flightcrew of improved procedures for pre-flight setup of the cabin pressurization system, as well as improved procedures for interpreting and responding to the cabin altitude/configuration warning horn. That AD resulted from reports that airplanes had failed to pressurize, and that the flightcrews failed to react properly to the cabin altitude warning horn. The actions specified in that AD are intended to prevent failure of the airplane to pressurize and subsequent failure of the flightcrew to recognize and react to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body) and consequent loss of airplane control.

Actions Since Related AD Was Issued

Since we issued AD 2006–13–13, we have received continuing reports of in-service events involving failure of the flightcrew to recognize and react properly to valid cabin altitude warning horns. Therefore, we have determined that a new flightcrew briefing before the first flight of the day and following any change in flight crewmembers, in addition to the existing AFM procedures, is necessary to mitigate the risk of additional events.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This AD requires revising the AFM to include a new flightcrew briefing that must be done before the first flight of the day and following any change in flightcrew members, and to advise the flightcrew of this additional briefing.

Interim Action

We consider this AD interim action. The manufacturer has advised that it currently is developing a design change in the cabin altitude warning system that will address the unsafe condition identified by this AD. Once this design change is developed, approved, and available, we might consider additional rulemaking.

FAA's Justification and Determination of the Effective Date and Compliance Time

We are issuing this AD to prevent failure of the flightcrew to recognize and react to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body) and consequent loss of airplane control. This action follows related rulemaking action we took in response to a report resulting from the investigation by the Air Accident Investigation and Aviation Safety Board of Greece into the August 14, 2005, Helios Airways accident near Athens, Greece. This action affects the entire fleet of Boeing Model 737 airplanes (nearly 5,000 airplanes worldwide); these airplanes have a very high utilization rate. Because of our requirement to promote safe flight of civil aircraft and thus the critical need to assure that the flightcrew recognizes and reacts properly to a valid cabin altitude warning horn and the compliance time involved with this action, this AD must be issued immediately.

We acknowledge that a compliance time of 120 days is unusually long for an AFM-change/immediately adopted rule. However, in this case, we have determined that it is necessary to provide sufficient time for operators to adequately prepare to meet the requirements of the AD. This preparation includes obtaining regulatory acceptance (from principal operations inspectors) of the required flightcrew preflight briefing aids, publication of flightcrew briefing aids in sufficient quantities, and familiarization of flightcrews with the AD briefing requirements. The time required to prepare to implement the AD requirements is increased by the size of the affected fleet. We have further determined that a 120-day compliance time will provide an adequate level of safety. Therefore, a compliance time of 120 days has been specified in order to provide operators with sufficient time to accomplish the requirements of this AD.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1166; Directorate Identifier 2008–NM–179–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends 39.13 by adding the following new AD:

2008–23–07 Boeing: Amendment 39–15728. Docket No. FAA–2008–1166; Directorate Identifier 2008–NM–179–AD.

Effective Date

(a) This airworthiness directive (AD) is effective November 25, 2008.

Affected ADs

(b) This AD is related to AD 2006–13–13, amendment 39–14666; paragraph (a) of AD 2003–03–15 R1, amendment 39–13366; and paragraph (a) of AD 2003–14–08, amendment 39–13227. This AD does not supersede the requirements of AD 2006–13–13, AD 2003–03–15 R1, or AD 2003–14–08.

Applicability

(c) This AD applies to all Boeing Model 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from continuing reports that flightcrews have failed to recognize and react properly to the cabin altitude warning horn. We are issuing this AD to prevent failure of the flightcrew to recognize and react to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body) and consequent loss of airplane control.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Revising the Airplane Flight Manual (AFM)

(f) Within 120 days after the effective date of this AD, revise the Limitations Section of the applicable Boeing 737 AFM to include the following statement. This may be done by inserting a copy of this AD into the applicable AFM.

"CABIN ALTITUDE WARNING TAKEOFF BRIEFING (required by AD 2008–23–07)

With the CABIN ALTITUDE and TAKEOFF CONFIG lights not installed, or installed but not activated:

As part of the Takeoff Briefing before engine start for the first flight of the day or following any change of either flightcrew member, the pilot-in-command will ensure the Cabin Altitude Warning indications and procedures are briefed in accordance with the procedures contained in the Normal Procedures section of this manual."

(g) Within 120 days after the effective date of this AD, revise the Normal Procedures Section of the applicable Boeing 737 AFM to include the following statement. This may be done by inserting a copy of this AD into the applicable AFM.

"CABIN ALTITUDE WARNING TAKEOFF BRIEFING (required by AD 2008–23–07)

The following briefing is important to further reduce the risk of flightcrew incapacitation due to hypoxia. Because of the dual purpose of the intermittent cabin altitude/takeoff configuration warning horn, this briefing serves to remind flightcrews that the sounding of the cabin altitude warning horn in flight requires immediate action, beginning with the immediate donning of oxygen masks. Upon completion of the applicable WARNING HORN—CABIN ALTITUDE OR CONFIGURATION non-normal checklist memory items, other alerts and indications on the flight deck (e.g., air/ground sensing system failures, equipment cooling OFF, etc.) may then be addressed.

Memory item cabin altitude warning indications and procedures must be briefed on airplanes in which the CABIN ALTITUDE and TAKEOFF CONFIG lights are not installed, or are installed but not activated. This will be included as an additional item on the Takeoff briefing before engine start for the first flight of the day, or following any change of either flightcrew member.

The briefing must include the following items.

—Whenever the intermittent warning horn sounds in flight:
1. Immediately, don oxygen masks and set regulators to 100%.
2. Establish crew communications.
3. Do the CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION checklist.

—Both pilots must verify on the overhead Cabin Altitude Panel that the cabin altitude is stabilized at or below 10,000 feet before removing oxygen masks."

Special Flight Permit

(h) Special flight permits are prohibited.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Gregg Nesemeier, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6479; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(j) None.

Issued in Renton, Washington, on October 24, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–26373 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0453; Airspace Docket No. 08–AAL–12]

Establishment of Class E Airspace; Kwethluk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Kwethluk, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Two SIAPs are being created for the Kwethluk Airport. This action establishes Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Kwethluk Airport, Kwethluk, AK.

DATES: *Effective Date:* 0901 UTC, January 15, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587;

telephone number: (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Tuesday, September 2, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR) part 71 to establish Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at Kwethluk, AK (73 FR 51252). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing instrument procedures for the Kwethluk Airport. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Kwethluk Airport area is created by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9S, *Airspace Designations and Reporting Points,* signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at the Kwethluk Airport, Alaska. This Class E airspace is created to accommodate aircraft executing new instrument procedures, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the Kwethluk Airport, Kwethluk, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Kwethluk Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 *Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

AAL AK E5 Kwethluk, AK [New]

Kwethluk, Kwethluk Airport, AK
(lat. 60°47′25″ N., long. 161°26′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Kwethluk Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Kwethluk Airport, AK.

* * * * *

Issued in Anchorage, AK, November 3, 2008.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E8–26660 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0005; Airspace Docket No. 08–AAL–1]

Revision of Class E Airspace; Ruby, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Ruby, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). One SIAP is being amended for the Ruby Airport. This action revises existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Ruby Airport, Ruby, AK.

DATES: *Effective Date:* 0901 UTC, January 15, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Tuesday September 2, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from 700 ft. above the surface and from 1,200 ft. above the surface at Ruby, AK (73 FR 51254). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing instrument procedures for the Ruby Airport. Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface in the Ruby Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Ruby Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing amended instrument procedures, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at the Ruby Airport, Ruby, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Ruby Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, *Airspace Designations and Reporting Points*, signed October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Ruby, AK [Revised]

Ruby, Ruby Airport, AK
(Lat. 64°43′38″ N., long. 155°28′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Ruby Airport, AK, and 8 miles either side of the 051° bearing from the Ruby Airport, AK, extending from the 6.4-mile radius to 20.3 miles northeast of the Ruby Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 70-mile radius of the Ruby Airport, AK.

* * * * *

Issued in Anchorage, AK, on October 27, 2008.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E8–26651 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2008–0517; Amdt. No. 93–88]

RIN 2120–AJ28

Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: The FAA is correcting a final rule published in the October 10, 2008, **Federal Register**. The final rule addressed congestion in the New York City area by assigning slots at John F. Kennedy (JFK) and Newark Liberty (Newark) International Airports in a way that allows carriers to respond to market forces to drive efficient airline behavior. The original rule incorrectly identified the date by which limited slots will revert to the FAA for auction. This rule corrects the date.

DATES: This correction will become effective on December 9, 2008.

FOR FURTHER INFORMATION CONTACT: Rebecca MacPherson, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073; e-mail *rebecca.macpherson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 2008 (73 FR 60544), the FAA published a final rule that will grandfather most of the existing operations at the airports. However, carriers will be required, for the first time, to purchase collectively approximately ten percent of the slots at each of the airports. There are no carve-outs or special provisions for new entrants or limited incumbents. This rule will improve the efficiency of the National Airspace System by forcing a market-based mechanism for establishing the value of slots. Under prevailing economic theory, once the true value of slots is assessed, carriers will make financial business decisions that would maximize the slots' use.

In the final rule, the FAA intended the initial reversion of slots for auction to take effect 30 days after the final rule's effective date, which would be January 8, 2009. This was the time period referenced in the final rule as approved by the Office of Management and Budget. The January 13, 2009 date published in the **Federal Register** reflects an incorrect time period of 35 days following the final rule effective date.

At present, the FAA intends to auction the initial slate of slots on or about January 12, 2009. While the slots revert to the FAA under the rule on January 8, 2009, the FAA is not required to conduct the auction on that date, and no carrier will lose the ability to operate any slot that meets the usage requirements of the John F. Kennedy (JFK) and Newark Liberty (Newark) International Airport Orders before October 25, 2009. Accordingly, this correction notice will have no practical impact on carriers operating at the airports.

Correction

■ In final rule FR Doc. E8–24046 published on October 10, 2008 (73 FR 65044), make the following correction.

§ 93.165 [Corrected]

■ On page 60569, in the third column, in § 93.165, paragraph (c), remove the date ''January 13, 2009'' and add in its place the date ''January 8, 2009''.

Issued in Washington, DC, on November 3, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E8–26567 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2006–25709; Amendment No. 93–87]

RIN 2120–AI70

Congestion Management Rule for LaGuardia Airport; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment.

SUMMARY: The FAA is correcting a final rule published in the October 10, 2008, **Federal Register**. The final rule addressed congestion at New York's LaGuardia Airport (LaGuardia). The original rule incorrectly identified the date by which limited slots will revert to the FAA for auction. This rule corrects the date.

DATES: The final rule published on October 10, 2008 (73 FR 60574), and this correction will become effective on December 9, 2008.

FOR FURTHER INFORMATION CONTACT: Rebecca MacPherson, FAA Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073; e-mail *rebecca.macpherson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 2008 (73 FR 60574), the FAA published a final rule that will grandfather most of the existing operations at the LaGuardia airport. However, carriers will be required, for the first time, to purchase collectively approximately nine percent of the slots at the airport. There are no carve-outs or special provisions for new entrants or limited incumbents. The rule will improve the efficiency of the National Airspace System by forcing a market-based mechanism for establishing the value of slots. Under prevailing economic theory, once the true value of slots is assessed, carriers will make financial business decisions that would maximize the slots' use.

Correction

In the final rule, the FAA intended the initial reversion of slots for auction to take effect 30 days after the final rule's effective date, which would be January 8, 2009. This was the time period referenced in the final rule as approved by the Office of Management and Budget. The January 13, 2009 date published in the **Federal Register** reflects an incorrect time period of 35 days following the final rule effective date.

At present, the FAA intends to auction the initial slate of slots on or about January 12, 2009. While the slots revert to the FAA under the rule on January 8, 2009, the FAA is not required to conduct the auction on that date, and no carrier will lose the ability to operate any slot that meets the usage requirements of the LaGuardia Order before March 8, 2009. Accordingly, this correction notice will have no practical impact on carriers operating at the airport.

Correction

■ In final rule FR Doc. E8–24008 published on October 10, 2008 (73 FR 65074), make the following correction.

§ 93.39 [Corrected]

■ On page 60599, in the third column, in § 93.39, remove the date ''January 13, 2009'' and add in its place the date ''January 8, 2009''.

Issued in Washington, DC, on November 3, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E8–26568 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30633; Amdt. No 3292]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 10, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 10, 2008.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ‘‘significant regulatory action’’ under Executive Order 12866; (2) is not a ‘‘significant rule’’ under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on October 17, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 20 NOV 2008

Gunnison, CO, Gunnison-Crested Butte Regional, ILS OR LOC/DME RWY 6, Amdt 4
Washington, DC, Washington Dulles Intl, CONVERGING ILS RWY 12, Amdt 6
Washington, DC, Washington Dulles Intl, CONVERGING ILS RWY 19C, Amdt 8
Washington, DC, Washington Dulles Intl, CONVERGING ILS RWY 19L, Amdt 8
Washington, DC, Washington Dulles Intl, CONVERGING ILS RWY 19R, Orig
Washington, DC, Washington Dulles Intl, ILS OR LOC RWY 1R; ILS RWY 1R 9CAT II); ILS RWY 1R (CAT III) Amdt 24
Washington, DC, Washington Dulles Intl, ILS OR LOC RWY 19L, Amdt 14
Washington, DC, Washington Dulles Intl, ILS OR LOC/DME RWY 1C, Amdt 1
Washington, DC, Washington Dulles Intl, ILS OR LOC/DME RWY 1L, Orig
Washington, DC, Washington Dulles Intl, ILS OR LOC/DME RWY 12, Amdt 9
Washington, DC, Washington Dulles Intl, ILS OR LOC/DME RWY 19C; ILS RWY 19C (CAT II); ILS RWY 19C (CAT III), Amdt 25
Washington, DC, Washington Dulles Intl, ILS OR LOC/DME RWY 19R, Orig
Washington, DC, Washington Dulles Intl, RNAV (GPS) RWY 1L, Orig

Washington, DC, Washington Dulles Intl, RNAV (GPS) RWY 12, Amdt 1
Washington, DC, Washington Dulles Intl, RNAV (GPS) RWY 19R, Orig
Washington, DC, Washington Dulles Intl, RNAV (GPS) Y RWY 1C, Amdt 1
Washington, DC, Washington Dulles Intl, RNAV (GPS) Y RWY 1R, Amdt 1
Washington, DC, Washington Dulles Intl, RNAV (GPS) Y RWY 12, Orig, CANCELLED
Washington, DC, Washington Dulles Intl, RNAV (GPS) Y RWY 19C, Amdt 3
Washington, DC, Washington Dulles Intl, RNAV (GPS) Y RWY 19L, Amdt 2
Washington, DC, Washington Dulles Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Lake Wales, FL, Lake Wales Municipal, Takeoff Minimums and Obstacle DP, Orig
West Palm Beach, FL, Palm Beach Intl, Takeoff Minimums and Obstacle DP, Amdt 2
Athens, GA, Athens/Ben Epps, ILS OR LOC/DME RWY 27, Amdt 1
Athens, GA, Athens/Ben Epps, NDB RWY 27, Amdt 1
Athens, GA, Athens/Ben Epps, RNAV (GPS) RWY 2, Orig
Athens, GA, Athens/Ben Epps, RNAV (GPS) RWY 9, Orig
Athens, GA, Athens/Ben Epps, RNAV (GPS) RWY 20, Orig
Athens, GA, Athens/Ben Epps, RNAV (GPS) RWY 27, Orig
Athens, GA, Athens/Ben Epps, VOR RWY 2, Amdt 11
Athens, GA, Athens/Ben Epps, VOR RWY 27, Amdt 12
Athens, GA, Athens/Ben Epps, VOR/DME RNAV OR GPS RWY 9, Amdt 1, CANCELLED
Athens, GA, Athens/Ben Epps, VOR/DME RNAV OR GPS RWY 20, Amdt 2, CANCELLED
Pella, IA, Pella Muni, RNAV (GPS) RWY 16, Amdt 1
Pella, IA, Pella Muni, RNAV (GPS) RWY 34, Amdt 1
Pella, IA, Pella Muni, Takeoff and Minimums and Obstacle DP, Amdt 1
Sterling-Rockfalls, IL, Whiteside Co-Jos H. Bittorf Fld, NDB RWY 7, Amdt 6
Sterling-Rockfalls, IL, Whiteside Co-Jos H. Bittorf Fld, RNAV (GPS) RWY 7, Orig
Sterling-Rockfalls, IL, Whiteside Co-Jos H. Bittorf Fld, RNAV (GPS) RWY 25, Orig
Sterling-Rockfalls, IL, Whiteside Co-Jos H. Bittorf Fld, Takeoff Minimums and Obstacle DP, Orig
Terre Haute, IN, Terre Haute Intl-Hulman Field, GPS RWY 5, Orig-A, CANCELLED
Terre Haute, IN, Terre Haute Intl-Hulman Field, GPS RWY 23, Orig, CANCELLED
Terre Haute, IN, Terre Haute Intl-Hulman Field, RNAV (GPS) RWY 5, Orig
Terre Haute, IN, Terre Haute Intl-Hulman Field, RNAV (GPS) RWY 23, Orig
Great Bend, KS, Great Bend Muni, NDB RWY 35, Amdt 3
Great Bend, KS, Great Bend Muni, RNAV (GPS) RWY 35, Orig
Great Bend, KS, Great Bend Muni, Takeoff Minimums and Obstacle DP, Orig
Independence, KS, Independence Muni, GPS RWY 17, Orig-A, CANCELLED
Independence, KS, Independence Muni, GPS RWY 35, Orig-B, CANCELLED
Independence, KS, Independence Muni, RNAV (GPS) RWY 17, Orig
Independence, KS, Independence Muni, RNAV (GPS) RWY 35, Orig
Independence, KS, Independence Muni, Takeoff Minimums and Obstacle DP, Orig
Salina, KS, Salina Muni, GPS RWY 12, Orig, CANCELLED
Salina, KS, Salina Muni, GPS RWY 30, Orig, CANCELLED
Salina, KS, Salina Muni, RNAV (GPS) RWY 12, Orig
Salina, KS, Salina Muni, RNAV (GPS) RWY 30, Orig
Salina, KS, Salina Muni, Takeoff Minimums and Obstacle DP, Orig
Salina, KS, Salina Muni, VOR RWY 17, Amdt 2
Louisville, KY, Bowman Field, Takeoff Minimums and Obstacle DP, Amdt 3
Monroe, LA, Monroe Rgnl, GPS RWY 4, Orig-A, CANCELLED
Monroe, LA, Monroe Rgnl, GPS RWY 22, Orig, CANCELLED
Monroe, LA, Monroe Rgnl, RNAV (GPS) RWY 4, Orig
Monroe, LA, Monroe Rgnl, RNAV (GPS) RWY 22, Orig
Falmouth, MA, Cape Cod Coast Guard Air Station, COPTER ILS OR LOC/DME RWY 23, Orig
Falmouth, MA, Cape Cod Coast Guard Air Station, ILS OR LOC RWY 23, Orig
Falmouth, MA, Cape Cod Coast Guard Air Station, ILS OR LOC RWY 32, Orig
Falmouth, MA, Cape Cod Coast Guard Air Station, NDB RWY 23, Orig
Falmouth, MA, Cape Cod Coast Guard Air Station, TACAN RWY 5, Orig
Falmouth, MA, Cape Cod Coast Guard Air Station, TACAN RWY 14, Orig
Falmouth, MA, Cape Cod Coast Guard Air Station, TACAN RWY 23, Orig
Falmouth, MA, Cape Cod Coast Guard Air Station, TACAN RWY 32, Orig
Falmouth, MA, Cape Cod Coast Guard Air Station, Takeoff Minimums and Obstacle DP, Orig
Fryeburg, ME, Eastern Slopes Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Rockland, ME, Knox County Regional, GPS RWY 31, Orig-C, CANCELLED
Rockland, ME, Knox County Regional, RNAV (GPS) RWY 3, Orig
Rockland, ME, Knox County Regional, RNAV (GPS) RWY 31, Orig
Caro, MI, Tuscola Area, RNAV (GPS) RWY 5, Orig
Caro, MI, Tuscola Area, RNAV (GPS) RWY 23, Orig
Caro, MI, Tuscola Area, Takeoff Minimums and Obstacle DP, Amdt 1
Caro, MI, Tuscola Area, VOR/DME–A, Amdt 5
Flint, MI, Bishop Intl, RNAV (GPS) RWY 27, Amdt 1
Flint, MI, Bishop Intl, RNAV (GPS) Y RWY 27, Orig, CANCELLED
South Haven, MI, South Haven Area Rgnl, RNAV (GPS) RWY 4, Orig
South Haven, MI, South Haven Area Rgnl, RNAV (GPS) RWY 22, Orig
South Haven, MI, South Haven Area Rgnl, VOR RWY 22, Amdt 10
Jacksonville, NC, Albert J. Ellis, ILS OR LOC RWY 5, Amdt 8
Jefferson, NC, Ashe County, GPS RWY 28, Amdt 1, CANCELLED
Jefferson, NC, Ashe County, RNAV (GPS) RWY 28, Orig
Caldwell, NJ, Essex County, LOC RWY 22, Amdt 2
Caldwell, NJ, Essex County, NDB OR GPS RWY 22, Amdt 5B, CANCELLED
Caldwell, NJ, Essex County, RNAV (GPS) RWY 22, Orig
Teterboro, NJ, Teterboro, Takeoff Minimums and Obstacle DP, Amdt 5
Buffalo, NY, Buffalo Airfield, RNAV (GPS) RWY 24, Orig
Buffalo, NY, Buffalo Airfield, Takeoff Minimums and Obstacle DP, Amdt 1
Buffalo, NY, Buffalo Airfield, VOR OR GPS RWY 24, Amdt 6B, CANCELLED
Watertown, NY, Watertown Intl, RNAV (GPS RWY 7, Amdt 1
White Plains, NY, Westchester County, RNAV (GPS) RWY 34, Amdt 2
Cleveland, OH, Cleveland-Hopkins Intl, CONVERGING ILS RWY 24R, Orig
Cleveland, OH, Cleveland-Hopkins Intl, CONVERGING ILS RWY 28, Orig
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 24L, Amdt 21
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 28, Amdt 23
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC/DME RWY 24R, ILS RWY 24R (CAT II), ILS RWY 24R (CAT III), Amdt 4
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) RWY 10, Amdt 1
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) RWY 24L, Amdt 2
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) RWY 24R, Amdt 2
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) RWY 28, Amdt 1
Cleveland, OH, Cleveland-Hopkins Intl, Takeoff Minimums and Obstacle DP, Amdt 15
Willoughby, OH, Willoughby Lost Nation Muni, NDB RWY 10, Amdt 10
Willoughby, OH, Willoughby Lost Nation Muni, NDB OR GPS RWY 28, Amdt 12C, CANCELLED
Willoughby, OH, Willoughby Lost Nation Muni, RNAV (GPS) RWY 5, Orig
Willoughby, OH, Willoughby Lost Nation Muni, RNAV (GPS) RWY 10, Orig
Willoughby, OH, Willoughby Lost Nation Muni, RNAV (GPS) RWY 23, Orig
Willoughby, OH, Willoughby Lost Nation Muni, RNAV (GPS) RWY 28, Orig
Clinton, OK, Clinton-Sherman, Takeoff Minimums and Obstacle DP, Orig
Harrisburg, PA, Capital City, ILS OR LOC RWY 8, Amdt 11
Harrisburg, PA, Capital City, RNAV (GPS) RWY 8, Orig
State College, PA, University Park, VOR–B, Amdt 10
Lebanon, TN, Lebanon Muni, RNAV (GPS) RWY 1, Orig
Lebanon, TN, Lebanon Muni, VOR/DME–A, Amdt 10
Memphis, TN, Memphis Intl, RNAV (GPS) RWY 36R, Amdt 1A
Longview, TX, East Texas Rgnl, ILS OR LOC RWY 13, Amdt 13

Longview, TX, East Texas Rgnl, NDB RWY 13, Amdt 15
Longview, TX, East Texas Rgnl, RNAV (GPS) RWY 13, Amdt 1
Longview, TX, East Texas Rgnl, RNAV (GPS) RWY 18, Amdt 1
Longview, TX, East Texas Rgnl, RNAV (GPS) RWY 31, Amdt 1
Longview, TX, East Texas Rgnl, RNAV (GPS) RWY 36, Amdt 1
Longview, TX, East Texas Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Longview, TX, East Texas Rgnl, VOR/DME OR TACAN RWY 13, Amdt 2
McAllen, TX, McAllen Miller Intl, ILS OR LOC RWY 31, Orig
McAllen, TX, McAllen Miller Intl, LOC BC RWY 31, Amdt 9C, CANCELLED
McAllen, TX, McAllen Miller Intl, RNAV (GPS) RWY 31, Amdt 1
McAllen, TX, McAllen Miller Intl, Takeoff and Minimums and Obstacle DP, Amdt 1
Everett, WA, Snohomish County (Paine Fld), ILS OR LOC/DME RWY 16R, Amdt 21

[FR Doc. E8–25511 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2008–0007]

RIN 0960–AG70

Representative Payment Under Titles II, VIII and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are amending our rules governing how we investigate representative payee applicants. Under these rules, any payee who previously satisfied the payee investigation criteria, including a face-to-face interview, and currently serves as a payee generally need not appear for another face-to-face interview when subsequently applying to become a payee unless we determine within our discretion, that a new face-to-face interview is necessary. The payee applicant would still be required to satisfy the rest of the investigation process as set forth in the regulations. Reducing the number of subsequent face-to-face interviews of payee applicants will streamline our representative payee application process, allowing payee applicants to become qualified more quickly when they already serve as a payee. This rule also will expedite payment of benefits in certain representative payee situations and reduce the burden on our field office employees by eliminating the necessity of interviewing such payee applicants.

DATES: This rule will be effective on December 10, 2008.

FOR FURTHER INFORMATION CONTACT: Jerome Albanese, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (404) 562–1024, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

We select a representative payee for certain persons eligible for Social Security benefits under title II of the Social Security Act (the Act), special veterans benefits (SVB) under title VIII of the Act, or supplemental security income under title XVI of the Act. *See* sections 205(j), 807, and 1631(a)(2) of the Act. We select a representative payee if we believe that payment through a payee rather than direct payment of benefits is in the interest of that beneficiary. Subpart U of part 404, subpart F of part 408, and subpart F of part 416 of our regulations explain the procedures we follow when determining whether to make representative payment and in selecting a representative payee under the title II, VIII and XVI programs.

Our current rules at 20 CFR 404.2024 and 416.624 require that, before selecting an individual or organization to act as a person's representative payee, we will investigate the payee applicant to determine the applicant's suitability. Our rule at § 408.624 adopts these investigatory requirements for SVBs by cross-reference to § 404.2024. *See* sections 205(j)(2), 807(b), and 1631(a)(2)(B) of the Act.

The Act states that to the extent practicable, an investigation shall include a face-to-face interview with a payee applicant. *See* sections 205(j)(2)(A)(i), 807(b)(1)(A), and 1631(a)(2)(B)(i)(I). Based on this authority, our current rules at §§ 404.2024 and 416.624 indicate that we generally conduct a face-to-face interview with a payee applicant each time they file to become a payee, regardless of whether the payee has previously satisfied the investigation criteria and participated in a face-to-face interview.

The requirement for holding a face-to-face interview may be waived only if conducting the interview is impracticable and would cause undue hardship for the payee applicant such as when a payee applicant would have to travel a great distance to the field office. Our current rules also indicate that we may decide it is impracticable to require subsequent face-to-face interviews for organizational payees that are known by our field office as suitable payees. We base this decision on the organization's past performance, recent contacts, and the organization's knowledge of and compliance with our reporting requirements.

Explanation of Changes

With these final rules, we are eliminating the requirement that we conduct a face-to-face interview before selecting an individual or organization to be a representative payee if we have already conducted a face-to-face interview with that payee and the payee is qualified and currently acting as a payee. However, we retain discretionary authority to require a subsequent face-to-face interview of any payee applicant. We are revising our rules in §§ 404.2024(b) and 416.624(b) to accomplish these changes.

We also have added a new paragraph (c), ''Impracticable,'' to §§ 404.2024 and 416.624. This new paragraph contains the first three sentences of current §§ 404.2024(b) and 416.624(b), with editorial changes. We are not making substantive changes to this text.

Public Comment

In the notice of proposed rulemaking we published in the **Federal Register** at 73 FR 12923 (March 11, 2008), we provided the public a 60-day period within which to comment on the proposed changes. That comment period ended on May 12, 2008. We received one comment, from an individual who opposed the proposed changes.

Comment: The commenter noted that because the representative payment program removes the beneficiary's right to manage his own benefit payments, we must act with extreme care when determining the need for a payee and in selecting the person or organization that would best serve as a payee. The commenter believed that in order to protect beneficiary rights, we should require all payee applicants to undergo a face-to-face interview every time they apply to be a payee. Accordingly, the commenter asked that we withdraw our proposal to eliminate such a requirement. In the alternative, the commenter suggested that if we adopt these changes, we should consider reviewing the payee's activities with regard to other beneficiaries before waiving subsequent face-to-face interviews.

Response: Although we share the commenter's concern that payees must manage benefits properly, we do not accept the commenter's suggestion to withdraw this rule. Under our current rules, there are nine criteria that must be met before selecting an individual or organization to act as a representative payee. *See* §§ 404.2024(a) and 416.624(a). Eight of these criteria remain unchanged. We are changing only our requirement regarding subsequent face-to-face interviews for payees who previously satisfied all of our criteria, including a face-to-face interview, and are qualified and currently acting as payees.

Our rules regarding recovery of misused benefits and potential civil monetary penalties remain unchanged and will continue to protect beneficiaries from payee misuse of benefits. As an added protection, we also retain the discretion to perform a subsequent face-to-face interview if we believe one is necessary. Our final rules specifically note that we base the decision concerning the necessity of a subsequent face-to-face interview on the payee's past performance and the payee's knowledge of and compliance with our reporting requirements. Because the final rules provide that we look at the payee's past performance, they address the commenter's concern that we review the payee's activities with regard to other beneficiaries prior to waiving a subsequent face-to-face interview. Additionally, our existing rules at §§ 404.2024(a)(5) and 416.624(a)(5) require that we determine whether the payee applicant has previously served as a representative payee and whether any previous appointment as a payee was terminated for misuse. Thus, we made no changes from the rules we proposed.

Regulatory Procedures

Executive Order 12866, as Amended

The Office of Management and Budget (OMB) determined that the final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, OMB reviewed these final rules.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities as they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules impose no reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income; 96.020, Special Benefits for Certain World War II Veterans.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social security.

20 CFR Part 416

Administrative practice and procedure; Aged; Blind, Disability benefits; Public Assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: August 18, 2008.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we amend subpart U of part 404 and subpart F of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

Subpart U—[Amended]

■ 1. The authority citation for subpart U continues to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

■ 2. Amend § 404.2024 by revising paragraphs (a)(1) and (b) and by adding new paragraph (c) as follows:

§ 404.2024 How do we investigate a representative payee applicant?

* * * * *

(a) * * *

(1) Conduct a face-to-face interview with the payee applicant unless it is impracticable as explained in paragraph (c) of this section.

* * * * *

(b) *Subsequent face-to-face interviews.* After holding a face-to-face interview with a payee applicant, subsequent face-to-face interviews are not required if that applicant continues to be qualified and currently is acting as a payee, unless we determine, within our discretion, that a new face-to-face interview is necessary. We base this decision on the payee's past performance and knowledge of and compliance with our reporting requirements.

(c) *Impracticable.* We may consider a face-to-face interview impracticable if it would cause the payee applicant undue hardship. For example, the payee applicant would have to travel a great distance to the field office. In this situation, we may conduct the investigation to determine the payee applicant's suitability to serve as a representative payee without a face-to-face interview.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart F—[Amended]

■ 1. The authority citation for subpart F continues to read as follows:

Authority: Secs. 702(a)(5), 1631 (a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383 (a)(2) and (d)(1)).

■ 2. Amend § 416.624 by revising paragraphs (a)(1) and (b) and by adding new paragraph (c) as follows:

§ 416.624 How do we investigate a representative payee applicant?

* * * * *

(a) * * *

(1) Conduct a face-to-face interview with the payee applicant unless it is impracticable as explained in paragraph (c) of this section.

* * * * *

(b) *Subsequent face-to-face interviews.* After holding a face-to-face interview with a payee applicant, subsequent face-to-face interviews are not required if that applicant continues to be qualified and currently is acting as a payee, unless we determine, within our discretion, that a new face-to-face interview is necessary. We base this decision on the payee's past performance and knowledge of and compliance with our reporting requirements.

(c) *Impracticable.* We may consider a face-to-face interview impracticable if it would cause the payee applicant undue hardship. For example, the payee applicant would have to travel a great distance to the field office. In this situation, we may conduct the investigation to determine the payee applicant's suitability to serve as a representative payee without a face-to-face interview.

[FR Doc. E8–26680 Filed 11–7–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. FDA–2004–N–0511] (formerly Docket No. 2004N–0556)

RIN 0910–AF21

Obstetrical and Gynecological Devices; Designation of Special Controls for Male Condoms Made of Natural Rubber Latex

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the classification regulation for condoms to designate a special control for male condoms made of natural rubber latex (latex). The special control for the device is the guidance document entitled ''Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300.'' The FDA will publish a notice in the **Federal Register** announcing the availability of the special control guidance document no later than the effective date of this final rule.

DATES: *Effective Date*: This rule is effective January 9, 2009.

Compliance Dates: Premarket notification submissions (510(k)s) for latex condoms filed on or after the effective date of this rule are expected to comply with the requirement of special controls at the time that the 510(k) is submitted. Latex condoms cleared for marketing on or after the effective date of the rule but submitted in 510(k)s filed before the effective date of the rule are expected to comply with the requirement of special controls on or before March 10, 2009. Latex condoms legally marketed before the effective date of this rule are expected to comply with the requirement of special controls December 10, 2009. Specific information on how the rule will be implemented can be found in section II.B of this document.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

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I. Background

In the **Federal Register** of November 14, 2005 (70 FR 69102), FDA proposed to amend existing classification regulations to designate a labeling guidance document as the special control for condoms made of natural rubber latex (latex condoms), classified under 21 CFR 884.5300, and latex condoms with spermicidal lubricant containing nonoxynol-9 (N–9), classified under § 884.5310 (21 CFR 884.5310). As proposed, the final rule amends § 884.5300 (21 CFR 884.5300) and designates a guidance document containing labeling recommendations as the special control for latex condoms. However, FDA continues to review the comments it received in response to its general and specific requests for comment on latex condoms with spermicidal lubricant and to evaluate the controls appropriate for condoms with spermicidal lubricant (§ 884.5310). Therefore, FDA is not issuing a final rule on that device at this time.[1]

In the following sections of this preamble, FDA addresses the statutory framework, regulatory history, and scientific information related to latex condoms; summarizes the final rule; and responds to the comments on FDA's designation of special controls for the latex condom.

A. Statutory Framework

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended, including the Medical Device Amendments of 1976 (the 1976

[1] On December 19, 2007, FDA published a final rule, codified at 21 CFR 201.66(c)(5)(ii)(H) and 21 CFR 201.325, that requires that labeling of OTC vaginal contraceptive/spermicidal drug products containing N–9 bear the following warnings:

- For vaginal use only
- Not for rectal (anal) use
- Sexually transmitted diseases (STDs) alert: This product does not protect against HIV/AIDS or other STDs and may increase the risk of getting HIV from an infected partner
- Do not use if you or your sex partner has HIV/AIDS. If you do not know if you or your sex partner is infected, choose another form of birth control.
- When using this product you may get vaginal irritation (burning, itching, or a rash)
- Stop use and ask a doctor if you or your partner get burning, itching, a rash or other irritation of the vagina or penis

Other information in the new labeling includes:

- When used correctly every time you have sex, latex condoms greatly reduce, but do not eliminate the risk of catching or spreading HIV, the virus that causes AIDS.
- Studies have raised safety concerns that products containing the spermicide nonoxynol 9 can irritate the vagina and rectum. Sometimes this irritation has no symptoms. This irritation may increase the risk of getting HIV/AIDS from an infected partner.
- You can use nonoxynol 9 for birth control with or without a diaphragm or condom if you have sex with only one partner who is not infected with HIV and who has no other sexual partners or HIV risk factors
- Use a latex condom without nonoxynol 9 if you or your sex partner has HIV/AIDS, multiple sex partners, or other HIV risk factors
- Ask a health professional if you have questions about your best birth control and STD prevention methods.

amendments) (Public Law 94–295) and the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as preamendments devices. Under section 513 of the act, FDA classifies these devices after the agency takes the following steps: (1) receives a recommendation from a device classification panel (an FDA advisory committee); (2) publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) publishes a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

FDA refers to devices that were not in commercial distribution before May 28, 1976, as postamendments devices. Postamendments devices are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. These devices remain in class III unless FDA does one of the following: (1) reclassifies the device into class I or II; (2) issues an order classifying the device into class I or II in accordance with section 513(f)(2) of the act; or (3) issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a legally marketed device that has been classified into class I or class II or to a preamendments device of a type that has yet to be initially classified in accordance with section 513(b). The agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and regulations at part 807 (21 CFR part 807).

Under the 1976 amendments, class II devices were defined as devices for which there was insufficient information to show that general controls themselves would provide reasonable assurance of safety and effectiveness, but for which there was sufficient information to establish performance standards to provide such assurance. SMDA broadened the definition of class II devices to mean those devices for which the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act).

B. Regulatory History of Latex Condoms [2]

Prior to enactment of the 1976 amendments, latex condoms were marketed in the United States for both contraception and prophylaxis, i.e., reducing the risk of sexually transmitted infections (STIs).[3] As a preamendments device, the latex condom was classified along with hundreds of other devices during FDA's original classification proceedings. Based primarily on the recommendations of experts on the Obstetrics and Gynecology Device Classification Panel, FDA classified latex condoms into class II by regulation published in the **Federal Register** of February 26, 1980 (45 FR 12710). Condoms were identified as ''* * * a sheath which completely covers the penis with a closely fitting membrane. The condom is used for contraceptive and for prophylactic purposes (preventing transmission of venereal disease) * * *'' (§ 884.5300). This classification regulation does not include condoms with spermicidal lubricant, which are postamendments devices classified under § 884.5300.

At the time that latex condoms were classified into class II, the statutory definition of that class contemplated the establishment of mandatory performance standards for all class II devices, in accordance with section 514(b) of the act (21 U.S.C. 360d(b)). Because of the complex process associated with issuing mandatory performance standards, the agency did not establish a performance standard for condoms or virtually any other class II device before the SMDA in 1990 provided additional options for special controls for class II devices. This rulemaking will for the first time establish a special control for latex condoms.

Latex condoms are also subject to the requirement of premarket notification, a general control requiring a determination of substantial equivalence before they may be marketed, and other general controls, including good manufacturing practices (quality system regulation), registration and listing, adverse event reporting, and the prohibitions on adulteration and misbranding. This device is also subject to labeling requirements applicable to all devices, including a statement of principal intended action(s) and adequate directions for use as described in part 801 (21 CFR part 801).

In addition to the general labeling requirements, latex condoms are subject to specific labeling requirements addressing expiration dating and latex sensitivity (21 CFR 801.435 and 801.437). FDA established expiration dating requirements in response to shelf life studies showing that important latex condom properties can change over time. The expiration dating regulation addresses the risk of latex condom deterioration due to product aging and helps ensure that consumers have information regarding the safe use of latex condoms (62 FR 50501, September 26, 1997). The latex sensitivity labeling requirements were added in response to numerous reports of severe allergic reactions and deaths related to a wide range of medical devices containing natural rubber (62 FR 51021 at 51029, September 30, 1997).

In addition to the history of action regarding latex condoms undertaken under the act, on December 21, 2000, Congress enacted Public Law 106–554, which required that FDA ''reexamine existing condom labels'' and ''determine whether the labels are medically accurate regarding the overall effectiveness or lack of effectiveness of condoms in preventing sexually transmitted diseases, including [human papillomavirus].'' In this review, FDA considered the following:

- Physical properties of condoms
- Condom slippage and breakage during actual use
- Plausibility for STI-risk reduction attributable to condoms
- Evaluations of condom effectiveness against STIs by other Federal agencies, and
- Clinical studies of condoms' protection against STIs published in peer-reviewed journals.

[2] As discussed in the 2005 proposed rule (70 FR 69102 at 69112), the proposal was limited to latex condoms, which represent the vast majority of condoms marketed in the United States. As discussed in the proposal, FDA intends to address condoms made from other materials (natural membrane (skin) or synthetic materials) at a future date.

[3] With the exception of a reference to the 2005 proposed replacement of ''venereal disease'' with ''sexually transmitted disease,'' FDA is using ''sexually transmitted infection'' or ''STI'' instead of ''sexually transmitted disease'' or ''STD'' in the final rule and special controls guidance document. This is discussed in more detail at section III.

As a result of this review of scientific information and of existing latex condom labeling, FDA concluded that existing latex condom labeling was medically accurate in presenting the conclusion that, as an overall matter, condoms are effective in reducing the risk of STIs. To help consumers make appropriate choices for their particular needs, and therefore to ensure the safe and effective use of condoms, FDA proposed to establish a labeling special control to address some additional, more nuanced information about condoms and STIs, as well as to provide information about contraception, and about appropriate directions and precautions for use of latex condoms. The present rulemaking grew out of that initiative.

C. Overview of Proposed Rule

In the **Federal Register** of November 14, 2005 (70 FR 69102), FDA issued a proposed rule to amend the classification regulations for condoms (§§ 884.5300 and 884.5310). The proposed regulatory changes were intended to help ensure that latex condoms were used safely and effectively by providing labeling conveying a concise, accurate message that neither exaggerated the degree of protection provided by latex condoms, nor undervalued overall STI-risk reduction provided by latex condom use.

FDA proposed to amend the identification section of the regulations to change the wording ''venereal disease'' to ''sexually transmitted diseases.'' FDA also proposed to add classification sections to each of the regulations, segregating the subset of condoms in each classification that were made of latex. Finally, FDA proposed to designate as a special control a guidance document with labeling recommendations for latex condoms, because the agency believed that this control, together with general controls, could reasonably assure the safety and effectiveness of these devices. The draft special controls guidance recommended labeling to inform consumers about the extent of protection provided by latex condoms against unintended pregnancy and against STIs, including labeling that informed consumers that STIs can be transmitted in various ways, including transmission to or from the penis and transmission by other types of sexual contact. The draft guidance recommended that labeling explain that latex condoms can reduce the risk of STIs, such as gonorrhea and chlamydia, that are spread to or from the penis by direct contact with the vagina and genital fluids. It further recommended labeling that indicated that some STIs, such as genital herpes and human papillomavirus (HPV), may also be transmitted by contact with infectious skin or mucosa not covered by the latex condom, and that latex condoms provide less protection against these STIs.

FDA proposed to establish the labeling guidance as a special control, by rulemaking, because it meant that manufacturers would be required to address the issues identified in the guidance. Unlike a regular guidance, which imposes no requirements, where a guidance document has been designated as a special control by a rule, manufacturers must address the issues identified in the guidance, either by following the recommendations in the guidance or by some other means that provides equivalent assurances of safety and effectiveness. At the same time, establishing a guidance document as a special control affords greater flexibility than a rule mandating specific labeling language and can facilitate updating labeling as new scientific information becomes available because the special control permits manufacturers to use any labeling that affords equivalent assurances of safety and effectiveness for latex condoms.

In response to FDA's requests for comment, more than one hundred commenters submitted information and comments to the two dockets (one docket for the proposed rule and one docket for the draft special controls guidance document). Comments were submitted by consumers, health professionals, industry, academia, state and Federal government agencies, as well as professional societies and organizations. The comments included different points of interest and concern. Many comments discussed issues involving latex condoms with spermicidal lubricant containing nonoxynol-9, and as discussed earlier, FDA continues to review those comments. In some cases, commenters filed comments to the dockets for both the rule and for the guidance; in other cases, comments were filed in only one docket. Because of the intertwined nature of the proposed rule and guidance and because of the significant overlap in comments, FDA considered all comments in preparing both the final rule and the intended final special control guidance document.[4]

D. Additional Scientific Information Developed After the Completion of the Proposed Rule and Draft Special Control Guidance

1. FDA Update of Epidemiology

In developing the 2005 proposed rule and draft guidance, to assess the overall effectiveness of latex condoms in preventing transmission of STIs, FDA evaluated a variety of scientific evidence and information about condoms and STIs. In particular, FDA considered the physical properties of a condom, which make it capable of acting as a barrier to the pathogens that cause STIs; evidence regarding condom slippage and breakage during actual use; plausibility for STI-risk reduction attributable to condoms, which draws on information about the different routes of transmission of different STIs; and evidence from good quality epidemiological studies published in peer-reviewed journals evaluating condoms and STI-risk reduction, including evaluations of condom effectiveness against STIs by other Federal agencies.

FDA's evaluation divided common STIs into two groups in relation to their usual routes of sexual transmission. FDA identified as Group I those STIs that are sexually transmitted solely either to or from the head of the penis, an area that is covered when a latex condom is used. Group I STIs include HIV/Acquired Immune Deficiency Syndrome (AIDS), gonorrhea, chlamydia, trichomoniasis,[5] and hepatitis B virus (HBV). FDA identified as Group II those STIs that can be transmitted not only through contact with the head of the penis, but also through contact with infected skin outside the area that is covered when a latex condom is used. Group II STIs include HPV, herpes simplex virus (HSV), syphilis, and chancroid. Considering the means of transmission of STIs and the extensive information on the physical characteristics and performance of condoms, as well as the specific clinical data available, FDA concluded that there was strong support for the conclusion that latex condoms reduce the overall risk of transmission

[4] The term ''intended final special control guidance document'' refers to the version of the guidance that is currently available for reference only at *http://www.fda.gov/cdrh/comp/guidance/1548ref.html*, pending approval under the Paperwork Reduction Act (the PRA). (See Section VII.)

[5] FDA's 2005 proposed rule identified trichomoniasis as a group I STI based on its route of transmission but did not consider any significant new information regarding trichomoniasis because none existed at that time. Neither the prior labeling recommendations nor the draft special control guidance recommended making specific claims for condom effectiveness against trichomoniasis. In formulating this final rule and special control guidance document, FDA also has found no new information about condom effectiveness against this specific pathogen, and does not include specific recommendations for labeling to address it.

of STIs. FDA also concluded that the degree of risk reduction for different types of STIs varies with their routes of transmission.

As discussed in section III.C, FDA's scientific conclusions were generally supported by the public comments. In preparing this final rule, moreover, FDA ensured that its scientific basis remains sound. Using the same approach as in 2005, analyzing systematic reviews[6] and, when those were not available, analyzing individual clinical studies for STIs, FDA reviewed more recent epidemiological studies and analyses published in peer-reviewed publications from December 2004, the cut-off date for studies considered in developing the proposed rule, through April 30, 2008. Consistent with its findings in 2005, FDA confirmed that latex condoms provide effective protection against all STIs evaluated. FDA findings from its updated review are described in more detail next.

Group I STIs

In the 2005 proposal, FDA concluded that latex condoms, when used correctly and consistently, are effective in reducing the risk of transmission of Group I STIs (70 FR 69102 at 69108). No new data undermine this conclusion and some new studies of particular Group I STIs provide additional support for it. Therefore, FDA's conclusion related to the Group I STIs continues to be that latex condoms when used correctly and consistently are effective in reducing the risk of transmission of group I STIs.

HIV

Well-designed studies evaluated prior to the proposed rule show the effect of consistent condom use on reducing the risk of HIV infection (70 FR 69102 at 69107 to 69108). One well-designed study conducted a meta-analysis (where results of all studies selected are pooled and analyzed) of studies of HIV-discordant subjects (where HIV status is known at the outset of the study, and an uninfected partner has sex with an infected partner) and found that condoms were 90 to 95 percent effective in reducing the incidence of new infections when used consistently. Another study was a systematic review of longitudinal studies and found that consistent use of condoms results in at least an 80 percent reduction in HIV incidence.

No new systematic reviews of condom effectiveness in reducing the risk of HIV infection have been published since the cut-off for studies considered in formulating FDA's proposed rule. On the basis described in the proposed rule, FDA's conclusion remains that consistent and correct use of latex condoms is highly effective in reducing the risk of HIV infection.

Gonorrhea and Chlamydia

Consistent with the FDA conclusions presented in 2005 (70 FR 69102 at 69108), one systematic review presented in 2006 demonstrated that consistent and correct use of condoms reduces risk of both gonorrhea and chlamydia in men and women (Ref. 9).

Hepatitis B Virus (HBV)

As was the case when FDA published its proposed rule, FDA is aware of no systematic reviews of condom effectiveness against HBV infection. Nor were any new epidemiological studies of condom use and HBV infection published during the period of FDA's review for preparation of this final rule. As discussed in the 2005 proposal (70 FR 69102 at 69108), one cross-sectional study showed that correct and consistent condom use was significantly associated with lower prevalence of HBV.

Group II STIs

In the 2005 proposal, FDA concluded that latex condoms, when used correctly and consistently, are effective in reducing the risk of transmission of group II STIs. Studies published since December 2004 support, and in the case of HPV, provide additional evidence for, this conclusion, as discussed below.

HPV

No new systematic reviews of condoms and HPV infection have been published since December 2004. At the time of the 2005 proposed rule, the clinical data regarding the effect of condom use on reducing the risk of infection with HPV was limited, but two systematic reviews supported the conclusion that correct and consistent use of latex condoms can reduce the rates of genital warts and cervical cancer, the main diseases associated with HPV infection (70 FR 69102 at 69108).

Since December 2004, several individual studies have addressed condom use and HPV infection, not only the incidence of HPV-related disease. Of particular note, a longitudinal study of the association of condom use and risk of genital HPV infection found that women who reported consistent condom use for the eight months prior to HPV testing were less likely to acquire a first-time infection of HPV and that women who reported 100 percent condom use in the prior eight months had no cervical squamous intraepithelial lesions detected on their Pap tests (Ref. 10) (hereinafter referred to as ''2006 Winer et al. study''). Another study published since the cut-off for the 2005 proposed rule found a higher prevalence of HPV in women who did not use condoms (Ref. 4). Yet another study published since the 2005 proposed rule demonstrated an association between prolonged HPV infection and less consistent condom use (Ref. 7). These newer studies now support the conclusion that condom use not only reduces the risk of genital warts and cervical cancer, it also reduces the risk of HPV infection itself.

Genital Herpes Simplex Virus (HSV)

No new systematic reviews of condoms and HSV infection have been published since December 2004. FDA's 2005 conclusions about latex condom effectiveness were based on the 2002 systematic review showing that condom use reduced the risk of HSV–2 infection for women (70 FR 69102 at 69108). A more recent prospective study showed effectiveness of condom use in reducing the risk of HSV infection in men and replicated effectiveness in women (Ref. 8), supporting the findings of the 2002 systematic review and FDA's 2005 conclusions.

Syphilis

As was the case when FDA published its proposed rule, FDA is not aware of any systematic reviews of condom effectiveness against syphilis infection. FDA's 2005 conclusions about latex condom effectiveness were based primarily on the data from two prospective studies, discussed in the preamble to the proposed rule (70 FR 69102 at 69108), that showed condom use provided significant protection against syphilis. More recently, one study evaluated risks of STIs, including syphilis, in female sex workers and found that failure to use a condom was associated with an increased risk of syphilis (Ref. 6). This information continues to support the conclusion made in the 2005 proposal that correct and consistent latex condom use reduces the risk of syphilis.

Chancroid

Chancroid infection is extremely rare in the United States. In 2006, only 33

[6] As stated in the proposed rule (70 FR 69102 at 69107), a systematic review means a review of a clearly formulated question that uses systematic and explicit methods to identify, select, and critically appraise relevant research and to collect and analyze data from studies that are included with the review.

new cases were reported in the United States. (Ref. 1). As in 2005, when FDA published its proposed rule, FDA knows of no systematic review of condom effectiveness against this STI. No new epidemiological studies of condom use and chancroid infection have been identified. Therefore, FDA's conclusions about latex condom effectiveness toward chancroid remain based on the study discussed in the 2005 proposal that reported that condom use was associated with a significantly reduced risk of genital ulcer disease (presumed to be chancroid) among prostitutes in Kenya (70 FR 69102 at 69108).

In summary, FDA believes that conclusions from the additional studies published in peer-reviewed publications from December 2004 through April 30, 2008, are consistent with FDA's 2005 conclusions about latex condom effectiveness. Newer evidence, such as the systematic review of the effect of condom use on transmission of gonorrhea and chlamydia infections (Ref. 9) and the recent epidemiological studies showing that condom use reduced HPV infection (Refs. 7 and 10), replicate or strengthen the basis for these conclusions.

2. Latex Condom Label Comprehension Study

As described in more detail below, many commenters expressed concern that FDA's proposed language for latex condom labeling was confusing, especially in its efforts to describe two tiers of protection afforded by condoms against STIs. These comments expressed serious concerns that FDA's latex condom labeling proposal was overly complex and would ultimately be misunderstood by the consumer. Many argued that this same confusion and misunderstanding would lead to unmerited negative impressions of latex condoms and—ultimately—to an unfounded decrease in latex condom use. One commenter also submitted a study it had conducted of consumer comprehension of the labeling proposed in the draft guidance, the results of which supported the comments that this labeling was not well understood. (This comment and study are discussed in section III of this document, where FDA discusses and responds to comments in detail.)

In light of these important comments on the labeling recommendations it had proposed, to inform its final rulemaking, FDA conducted a study to see whether typical consumers understand latex condom labeling, testing both the current labeling and the labeling proposed in the 2005 draft guidance document.

FDA Study Objectives

FDA contracted for a latex condom label comprehension study. Conducted in November and December 2007, the study was designed to measure and compare consumer understanding of the labeling recommended for latex condoms under FDA's 1998 guidance document, ''Latex Condoms for Men, Information for 510(k) Premarket Notifications: Use of Consensus Standards for Abbreviated Submissions,'' which is found on currently marketed latex condoms, and the latex condom labeling proposed in the 2005 draft special controls guidance. The study specifically focused on FDA's proposal to include more detailed information in the labeling about the relative degree of protection that condoms provide against different STIs.[7]

Study Design

Participants were recruited from six shopping malls, four retail pharmacies, and three literacy centers in 11 communities throughout the United States. Eight hundred and forty-four (844) participants between the ages of 18 and 54 were divided almost evenly to review either the current or proposed latex condom labeling. Each participant was asked to respond to a set of questions intended to measure his or her understanding of the labeling. When responding to the questions, participants were allowed to look at the labeling provided.

Quotas were established to attain an equal distribution by sex and pre-specified proportions of respondents by age and reading ability. The Rapid Estimate of Adult Literacy in Medicine (REALM) test (Ref. 3) was used to assess reading level, and a threshold score was chosen, which divided the group into normal-literacy (ninth grade reading level and above) and low-literacy (eighth grade reading level and below). Of the 844 subjects, 430 were classified as normal-literate, 405 as low-literate, and nine had no REALM score.

FDA Study Results

Poorer readers and those with less education (two variables not highly correlated) had lower comprehension scores than those with a higher reading level. However, there were no differences based on age, race, ethnicity, income, or the type of neighborhoods where the respondents resided.

Participants understood the basic message in both the current and proposed labeling that latex condoms help protect against transmission of sexually transmitted infections (>80 percent correct responses). When comparing equivalent questions between the current and proposed latex condom labeling, for every comparison with a significant difference in rates of comprehension, the difference favored the current latex condom labeling over the proposed latex condom labeling. Study participants did not understand the more complex messages about the relative degree of protection provided by condoms against different STIs (<30 percent correct responses).

The study was not designed to determine the reasons for the differences in consumer comprehension of the two labeling versions. However, FDA's proposed labeling was unarguably lengthier, with considerably more information than current labeling. Study analysis suggests that shorter and simpler labeling will more likely result in better consumer comprehension.

II. Summary of the Final Rule

A. Overview of the Final Rule

In developing this final rule, FDA considered all of the comments, as well as its updated review of scientific evidence and results of the latex condom label comprehension study. FDA concludes that the scientific evidence today continues to fully support the overall effectiveness of latex condoms in reducing the risk of transmission of common STIs. That evidence supports the conclusions that correct and consistent use of latex condoms reduces the risk of transmission of HIV/AIDS and other STIs such as gonorrhea that are sexually transmitted solely by contact with the head of the penis (via genital fluids). Also, the evidence available today provides even more support than was available at the time of publication of the proposed rule for the conclusion that latex condoms are effective in reducing the risk of transmission of other STIs, such as genital herpes and HPV, that can be transmitted not only by contact with the head of the penis, the area covered by a latex condom, but also by contact with infected skin outside the area covered by the latex condom.

In developing the final rule and intended final special control guidance document, FDA not only affirmed the underlying scientific conclusions, but

[7] The study also focused on the new warnings proposed for condoms with nonoxynol-9 (N–9) in the lubricant; as described in the introductory paragraph of section I of this preamble, FDA's proposal to designate a labeling guidance as a special control for those devices remains open, as FDA is still considering the comments and other data, including these study results, that are relevant to that proposal.

also considered whether the labeling statements recommended in the draft special control guidance document, in particular the statements addressing the effectiveness of latex condoms against the two groups of STIs, were adequately clear. Based on comments that criticized the labeling contained in the draft guidance as, among other things, ''misleading,'' ''overly complex,'' ''difficult to understand,'' and ''negative possibly discouraging use,'' as discussed in section I, FDA sponsored a latex condom label comprehension study. This study supported commenters who maintained that the labeling contained in the draft guidance was too confusing for consumers, and did not effectively and adequately communicate the effectiveness of latex condoms against these two groups of STIs.

Taking account of the comments and other information described in this preamble, FDA's final rule and intended final special control guidance remain consistent with the proposal but incorporate some changes. The final rule, like the proposal, amends the identification section of § 884.5300 to change the terminology used. As proposed, the final rule also creates new classification sections distinguishing condoms made of natural rubber latex from condoms made of other materials, including natural membrane and synthetic materials. Finally, as proposed, the final rule designates a guidance document containing labeling recommendations as the special control for the subset of condoms made of natural rubber latex, to address issues of safety and effectiveness discussed below and to convey the basic scientific conclusions already described. In response to comments and in consideration of the other information described previously, FDA has simplified the labeling recommended for latex condoms, including the labeling statements regarding the degree of protection afforded by latex condoms against the two groups of STIs. FDA has also updated the recommended directions for use and precautions to help ensure consistent and correct use of latex condoms. Finally, FDA has assigned a new title to the final guidance document designated as a special control by this rule in order to avoid confusion with the draft guidance made available in November 2005, which remains available as the proposed special control for latex condoms with spermicidal lubricant in association with the pending proposal to amend § 884.5310. (See Section I.)

B. Implementation Strategy

FDA intends to implement this final rule as described in the following paragraphs. The general approach remains consistent with what was set forth in the 2005 proposed rule, but certain time frames have been extended. Specifically, this final rule will be effective 60 days after its date of publication, rather than the 30 days anticipated in the proposed rule. The implementation strategy takes account of the changed effective date of the final rule, while remaining generally consistent with the implementation strategy outlined in the proposed rule.

The proposed rule anticipated that latex condoms legally marketed prior to the effective date of a final rule would have 11 months after the effective date, or a total of 12 months from publication of the final rule, to meet the requirements of special controls. That proposed rule also anticipated that latex condoms that were the subject of pending 510(k) applications on the effective date of any final rule but cleared subsequently would be expected to comply with the requirement of special controls for latex condoms no more than 60 days after the effective date of the final rule.

For the final rule, FDA intends the following implementation strategy. Latex condoms that are the subject of premarket notification submissions (510(k)s) filed on or after the effective date of this rule are expected to comply with the requirement of special controls immediately upon the rule taking effect. Therefore, a firm submitting a 510(k) for a latex condom on or after the effective date of this rule must show that its device meets the recommendations of the special control guidance (as made available after PRA approval) or in some other way provides equivalent assurances of safety and effectiveness.

Latex condoms that are the subject of a 510(k) that is pending on the effective date of this final rule but are subsequently cleared are expected to comply with the requirement of special controls by following the recommendations in the special control guidance (as made available after PRA approval) or providing equivalent assurances of safety and effectiveness on or before 120 days after the date of publication of this final rule.

Latex condoms that were legally marketed prior to the effective date of this final rule are expected to comply with the requirement of special controls by following the recommendations in the special control guidance (as made available after PRA approval) or providing equivalent assurances of safety and effectiveness no more than 13 months after the date of publication of this final rule. As in the proposal, this gives firms marketing these latex condoms 11 months from the effective date of the final rule to achieve compliance, and a total period of 13 months from the date of publication of the final rule, rather than the 12 months from publication defined under the proposal. FDA believes that this period will allow for the production of new labeling to meet the requirement of special controls without leading to product shortages, while promoting the regulatory purpose of ensuring that this new labeling is available to consumers in a timely fashion.

C. Issues Requiring Special Controls

In the 2005 proposed rule, FDA identified several issues associated with the use of latex condoms that required special controls to help provide a reasonable assurance of safety and effectiveness. The issues included the risks of unintended pregnancy and of STI transmission, and the issue of incorrect or inconsistent use, which undermines the effectiveness of the latex condom in protecting against unintended pregnancy and STI transmission.

In the final rule, FDA is designating a guidance document with labeling recommendations as the required special control for latex condoms to address the issues of safety and effectiveness associated with these devices—the risks of unintended pregnancy and of STIs, and the issue of incorrect or inconsistent use.

1. Unintended Pregnancy

One of the principal intended actions of latex condoms is contraception. Latex condoms can greatly reduce the risk of unintended pregnancy, but cannot eliminate it. The special controls guidance recommends that the labeling indicate that latex condoms are intended to prevent pregnancy. Labeling should also indicate that latex condoms do not completely eliminate the risk of pregnancy. The guidance also recommends that the package insert contain contraceptive effectiveness information comparing pregnancy rates for latex condoms to rates for other contraceptive options available in the United States including drugs, devices, and methods of permanent sterilization, as well as a statement that consumers who have questions about contraceptive options, particularly because of health reasons for avoiding pregnancy, should contact a health care provider.

2. Transmission of Sexually Transmitted Infections (STIs)

The other principal intended action of latex condoms is protection against the transmission of STIs. The intended final special controls guidance recommends that labeling state that latex condoms are intended to prevent HIV infection (AIDS) and other STIs. In addition, the labeling should include a statement that condoms do not completely eliminate the risk of STIs. Labeling should indicate that latex condoms reduce the risk of STIs by providing a barrier against the source of infection. Labeling should indicate that latex condoms are most effective at reducing transmission of STIs such as HIV infection (AIDS) and gonorrhea that are spread by contact with the head of the penis, an area covered when the condom is used. Labeling should also indicate that condoms are less effective against STIs such as HPV and herpes that can also be spread by contact with infected skin that is not covered by the latex condom.

The intended final guidance also recommends labeling that indicates that a health care provider should be contacted if a consumer believes they may have an STI. The intended final special controls guidance further recommends that labeling indicate that for more information on latex condoms or STIs, a health care provider or public health agency should be contacted.

3. Incorrect or Inconsistent Use

In order to get the most protection from a latex condom, latex condoms must be used correctly every time a consumer has sex. To promote correct use, the intended final special controls guidance recommends that labeling include directions for use and precautions against incorrect use. To promote consistent use, the intended final special controls guidance recommends that labeling state that to get the most protection from a latex condom, a condom be used correctly every time the consumer has sex.

III. Comments and FDA's Responses

More than 100 commenters submitted information and comments to the two dockets for the proposed rule and draft special controls guidance document. The commenters included consumers, health professionals, industry, academia, State and Federal agencies, professional societies, and organizations. Because of the intertwined nature of the documents and the significant duplication of comments between the dockets for the proposed rule and draft special controls guidance document, FDA is summarizing and responding to the comments to both dockets in this preamble.

In general, the comments stated that FDA had properly described the science regarding latex condom effectiveness, on which FDA based its proposed special control labeling recommendations. None of the comments questioned the importance of accurate latex condom labels. Many comments indicated that consumers deserve to understand how and why condoms work. However, as previously noted, a substantial number of comments stated that the specific labeling recommendations in the draft guidance document were too complex to be effective in conveying this important information to consumers, and could inadvertently lead to misimpression regarding the safety and effectiveness of condoms, particularly for use in reducing the risk of STIs.

In issuing the final rule designating the revised guidance document as a special control, FDA is affirming the safety and effectiveness of condoms for contraception, as well as for reducing the risk of transmission of STIs, including those most common in the United States. In response to comments, and in light of the consumer comprehension studies provided in those comments and described previously, FDA has revised the recommended labeling messages contained in the intended final special control guidance document to simplify them and better communicate the essential information they contain. Following is a summary of the specific comments and the agency's responses.

A. Identification Section of the Classification Regulation

(Comment 1) One comment stated that FDA should substitute ''sexually transmitted infections'' wherever it was using ''sexually transmitted diseases.'' This comment pointed out that the purpose of the latex condom is to prevent the infection; the diseases are the clinical sequellae of the infection.

(Response) FDA agrees with this comment, and notes that the term ''sexually transmitted infection'' has gained currency in the clinical community. Accordingly, FDA have revised the language in § 884.5300 and the labeling recommendations in the special controls guidance document to use ''sexually transmitted infection'' or ''STI.''

B. Establishment of a Guidance Document as a Special Control

(Comment 2) One commenter disagreed with the decision by FDA to issue labeling guidelines under special controls guidance rather than mandating through regulation specific new language on all condom labeling to address the concerns FDA has identified. The commenter did not agree with giving flexibility to manufacturers on the wording used.

(Response) FDA believes a special control guidance will provide an appropriate level of control over labeling. Unlike a regular guidance, which imposes no requirements, where a guidance document has been designated as a special control by a rule, manufacturers must address the issues identified in the guidance, either by following the recommendations in the guidance or by some other means that provides equivalent assurances of safety and effectiveness. If a manufacturer proposes to use a means other than the labeling recommendations set forth in the intended final special control guidance, the manufacturer will need to establish equivalent assurance of safety and effectiveness of the alternative.

C. FDA's Review of Scientific Information

The 2005 proposed rule included a summary of FDA's review of the medical accuracy of latex condom labeling, which included an extensive review of the scientific information related to condoms. As discussed in the proposal, FDA considered the physical properties of condoms, condom slippage and breakage during actual use, the plausibility for STI-reduction attributable to condoms, evaluations of condom protection against STIs by other Federal agencies, and clinical data regarding condom protection against STIs. The follow sections discuss the comments and FDA's responses related to this review.

1. General Comments

(Comment 3) Many of the comments commended the proposed rule and draft special controls guidance document as well grounded in the scientific and medical evidence and consistent with the findings from clinical studies in the available literature.

(Response) FDA agrees. In addition to the studies on which the 2005 proposal was based, as described previously, peer-reviewed epidemiological studies published subsequently have also supported the conclusion that latex condom use reduces the risk of STIs.

2. Slippage and Breakage

(Comment 4) One comment challenged FDA's estimate of the rates of condom slippage and breakage in actual use and expressed concerns that some ''key points'' were missing, including the experience of the user. More specifically, the commenter ''would have preferred that most slippage and breakage fall within the 2–4% range with experienced users toward the 2% and lower range and inexperienced users at the higher 4% range and above.'' This comment also disagreed with FDA's statement that condom slippage and breakage data support the conclusion that condoms reduce the risk of STI transmission and stated ''[s]lippage and breakage data does not support the conclusion that condoms help, rather the opposite.'' The commenter stated that the labeling recommendations should reflect that even with perfect use, an individual can become infected when slippage and breakage occurs.

(Response) FDA disagrees that the slippage and breakage data do not support the conclusion that condoms reduce the risk of STI transmission. FDA notes that rates of slippage and breakage during use have been measured for many different commercially available latex condoms, typically ranging between 0.5–2% (70 FR 69102 at 69105). FDA believes that these low rates of condom slippage and breakage, when taken together with studies of condom properties discussed in the proposed rule (see 70 FR 69102 at 69104 to 69105), support the conclusion that latex condoms, when used consistently and correctly, provide a reliable barrier to STI pathogens. FDA concurs with the commenter's point that even with correct and consistent use, slippage and breakage can occur. FDA does not believe, however, that additional wording is necessary to underscore this point regarding perfect use. FDA believes that the labeling recommendations as crafted accurately reflect the overall conclusion that when used correctly and consistently, latex condoms reduce the risk of STI transmission but do not completely eliminate it.

3. Risk Reduction

(Comment 5) One comment suggested that FDA's analysis overlooked infectivity. This comment recommended changes to the FDA conclusion about condom effectiveness to reflect this.

(Response) FDA does not believe that discussion of infectivity would benefit consumers in making safe and effective use of latex condoms. While the infectivity of the pathogen is among the factors that affect the baseline risk of acquiring a specific STI, even the most infective STI pathogen cannot penetrate an intact latex condom. Infectivity of the pathogen thus only impacts the net risk of infection despite condom use where the latex condom does not present a barrier to interrupt the potential path of transmission—either because the infected skin is outside the area covered by the condom, or because the condom has failed (a rare event with correct use). In its intended final labeling recommendations, FDA has already described that condoms derive their effectiveness from providing a barrier to the source of infection and that condoms are less effective against STIs that are transmitted by contact with infected skin outside the area covered by the condom (as well as by contact with the head of the penis). Recommended labeling also emphasizes the importance of correct and consistent use to maximize the protection provided by a latex condom, but acknowledges that use of condoms does not completely eliminate the risk of STI transmission. As labeling does not quantify the amount of risk reduction for specific STIs, FDA does not believe that addition of discussion of infectivity would provide useful information beyond the expression of limits and of conditions to optimize benefit already provided.

(Comment 6) One comment challenged FDA's conclusions regarding the degree of risk reduction afforded by latex condoms when the population evaluated in epidemiologic studies from which data were obtained consisted of commercial sex workers (CSWs). This comment stated that ''One must use caution when generalizing prostitute studies to the general population.''

(Response) The commenter did not provide additional details or support for his statement, but referenced an epidemiologic study (70 FR 69102 at 69117, reference 31, Kjaer, S.K., E.I. Svare, A.M. Worm, et al.). The authors of that study noted that CSWs are likely to have become sexually active at a younger age compared to other populations, and speculated that early and multiple STIs in this population might lead to a more robust immunologic response among chronically infected compared to other populations. Importantly, however, the authors noted that this latter theory is unproven.

Conducting studies outside the United States, in places and populations where the disease prevalence is high, makes it possible to obtain valid outcomes data from studies that are reasonably sized and would likely be impossible to conduct in lower risk populations in the United States. Despite differences between the study populations and typical U.S. users, FDA believes conclusions from such studies are relevant, because the following fundamental elements that the studies address are identical in the study population and in the expected U.S. user population: (1) Primary study endpoint (presence of infection); (2) pathogen (individual STI); (3) route of transmission (sexual); and (4) prophylaxis (latex condom).

4. Evaluation of Latex Condom Effectiveness

(Comment 7) One comment strongly criticized the June 2000 Workshop convened by the National Institutes of Health (NIH) with other Federal public health agencies and outside experts (70 FR 69102 at 69106), its deliberative process, and the conclusions that were issued afterwards. This comment stated that available evidence today actually supports a stronger statement regarding latex condom effectiveness for STI prevention, especially those STIs transmitted by contact with genital fluids.

(Response) FDA agrees that there is more evidence today on the effectiveness of latex condoms against acquisition of various STIs than was available when the June 2000 workshop was held. This includes additional data that further support the longstanding public health message that latex condoms are highly effective against HIV/AIDS. As described previously in section I, it also encompasses new data now showing that condoms protect against HPV infection as well as the clinical sequellae of HPV infection, genital warts and cervical cancer.

(Comment 8) One comment stated that FDA's labeling proposal was misleading regarding condom use lowering the risk of HPV infection and disease. It cited a 1999 letter from Dr. Richard Klausner, then director of the National Cancer Institute, to the U.S. House of Representatives Commerce Committee stating ''the conclusion that condoms are ineffective against HPV infection is based on the results of several long term studies that have failed to show that barrier contraceptives prevent cervical HPV infection, dysplasia or cancer,'' as well as the summary report of the June 2000 Workshop on condom effectiveness.

(Response) As discussed in section I, many studies described in the published literature since 2000, including two systematic reviews (discussed in the 2005 proposed rule, 70 FR 69102 at 69108), support the conclusion that correct and consistent latex condom use can reduce the rates of cervical dysplasia and genital warts, diseases associated with HPV infection.

Moreover, as discussed in section I.D.1, since December 2004, several individual studies have addressed condom use and HPV infection and demonstrated that use of latex condoms reduces the risk of HPV infection itself. The letter from Dr. Klausner and the HPV conclusions of the June 2000 Workshop report have been superseded by the evidence.

(Comment 9) Another comment stated that FDA's summary of the evidence is misleading where it states ''[The Centers for Disease Control and Prevention's] report cited three studies (not included in the June 2000 Workshop report) that showed a statistically significant reduction in risk of HPV infection attributable to condoms, but noted that most studies did not show this effect'' (70 FR 69102 at 69107). This comment stated that only one of the three reports identified demonstrated true risk reduction; the other two were not statistically significant because their confidence interval touched on 1.0.

(Response) As noted by the comment, two of the three studies regarding the effect of condom use on HPV infection that were cited had a confidence value with an upper bound of 1.0. FDA's 2005 draft guidance reflected the limited evidence then available regarding the effect of condom use on HPV infection itself, by recommending statements based on the evidence regarding the effect of latex condom use on clinical consequences of HPV infection, cervical cancer and genital warts, which came from studies other than those addressed by the comment. As described in section I.D. of this document, moreover, subsequent to publication of the proposed rule, additional studies of HPV infection have published that have shown statistically significant reduction in HPV infection.

The best-designed study to date evaluating whether latex condoms reduce the risk of HPV infection is the 2006 Winer et al. study published after the 2005 proposed rule was issued (Ref. 10). Compared to previous studies on condoms and HPV infection, the 2006 Winer et al. study had a prospective, longitudinal design which provided critical information on the temporal relationship between condom use and HPV infection. Another asset in this study design is that study subjects provided information on condom use every 2 weeks in order to improve the precision of reported condom use. Also, data were collected using electronic diaries, a method that may yield more truthful reporting on condom use behavior than through ace-to-face interviews. Study inclusion criteria limited participation to women who first had intercourse with a male partner within two weeks before enrollment or during the study. This ensured that HPV infections detected during the study were truly ''incident,'' that is, truly occurred during the course of the study in a previously uninfected woman. Incident HPV infection, or lack of infection, was then evaluated as it related to 100 percent, 50 to 99 percent, 5 to 49 percent or <5 percent condom use. The adjusted hazard ratio for incident HPV for women whose partners had used condoms 100 percent of the time over the 8 months of the study compared to women whose partners used condoms <5 percent of the time was 0.3, 95 percent confidence interval 0.1 to 0.6 with p-value 0.003. This result is statistically significant. The conclusion of the study was that ''among newly sexually active women, consistent condom use by their partners appears to reduce the risk of cervical and vulvovaginal HPV infection.''

FDA believes that the results of the 2006 Winer et al. support the conclusion that consistent latex condom use reduces the risk of cervical and vulvovaginal HPV infection, which is stronger than the conclusion in the 2004 CDC Report to Congress that ''condoms may provide some protection in preventing transmission of HPV infections but that protection is partial at best.''

D. Labeling Recommendations

As discussed earlier, in the 2005 proposed rule, FDA identified several issues associated with the use of latex condoms that required special controls to help provide a reasonable assurance of safety and effectiveness. The issues included the risks of unintended pregnancy and of STI transmission, and the issue of incorrect or inconsistent use. FDA proposed to designate a guidance document with labeling recommendations as the required special control for latex condoms, to address the issues of safety and effectiveness associated with these devices. The following sections discuss the comments and FDA's responses related to the labeling recommendations of the special controls guidance document.

1. General

(Comment 10) Many comments expressed concerns that FDA had allowed ''politics'' to influence FDA policy. For example, one comment stated that the proposed rule appeared to ''bring politics and morality into what should be a science based process.'' Many commenters shared a concern that the proposed labeling would ''discourage'' the use of condoms and undermine the public's confidence in condoms.

(Response) As discussed in the 2005 proposal, FDA's efforts to improve latex condom labeling and thereby help ensure the safety and effectiveness of condoms grew out of a statutorily mandated review of existing latex condom labeling to determine whether it was medically accurate with respect to the overall effectiveness or lack of effectiveness of condoms in preventing transmission of STIs, including HPV. FDA concluded that latex condoms help protect against all STIs, but better against some than others. More accurate information about the effectiveness of latex condom use with respect to STI transmission can lead to better choices by individuals who seek to protect themselves against these infections and potentially to reduced transfer of STIs. The final rule and intended final special control guidance are based on FDA's scientific evaluation of all available evidence.

2. Comprehension

(Comment 11) Many comments stated that, although consistent with the evidence, the FDA proposal for latex condom labeling was overly complex and confusing, especially in regards to STIs transmitted through skin to skin contact. Some comments were concerned that the labeling might discourage condom use due to confusion or misunderstanding.

Other comments stated that latex condom labeling needs to be clear and positive. Many comments strongly encouraged FDA to re evaluate its labeling proposal with the objectives of keeping it simple, clear, correct, and specific.

(Response) The labeling recommendations of the draft guidance reflected an attempt to strike a balance between providing more information for the consumer and creating a complex message that might be misunderstood. These and other comments about label comprehension prompted FDA to sponsor a label comprehension study of both current labeling and the labeling recommendations included in the draft guidance. The results of the FDA-sponsored label comprehension study were discussed in section I and contributed to FDA's simplification of the labeling recommended in the intended final special control guidance.

(Comment 12) One commenter submitted the results from its own label comprehension study, conducted in January 2006, to evaluate how well the general public understood FDA's proposed latex condom labeling. This study, using a paper-and-pencil questionnaire, surveyed a convenience sample of 247 men and women between 18 and 30 years of age in Austin, Texas. The study concluded that it is important for condom labeling to provide clear and specific information to users on risk reduction provided by condoms for pregnancy and various sexually transmitted diseases. In general, survey respondents preferred statements that are easy to understand and provide detailed and specific information.

(Response) FDA acknowledges the value of this label comprehension study. However, the use of a small convenience sample, drawn from a highly educated university town, may have limited validity and may also be difficult to generalize because it lacks geographic and educational diversity. These limitations contributed to FDA's decision to conduct its own study. As described previously, in consideration of this study and the numerous comments regarding the complexity and potential for misunderstanding of labeling, as well as FDA's own labeling study, the intended final special controls guidance document contains substantially simplified labeling recommendations.

(Comment 13) Many comments shared the view that FDA would be ''misleading and misinforming millions of Americans if the label is changed * * *.'' One commenter expressed concern that ''the addition of extensive labels to condom packaging may constitute 'red flags' to consumers intending to have sex, and that those flags may increase sex without the protection of condoms.''

(Response) FDA's labeling initiative should in no way be construed to mean that condoms do not work. As explained in the preamble to the proposed rule and updated and reaffirmed here, scientific evidence supports the conclusion that latex condoms are effective in reducing the risk of pregnancy and the overall risk of STI transmission, although latex condoms are more effective with regard to some STIs than others. In fact, as described earlier, the data supporting overall latex condom effectiveness in reducing STI transmission are stronger today than ever. In light of comments and consumer comprehension data, FDA has made revisions to the labeling to clarify the wording and reflect this overall conclusion.

(Comment 14) Many comments stated that the FDA proposal lacked balance, with far more emphasis than necessary on what a condom cannot do and not enough emphasis on the benefits of condom use. One comment stated that ''[g]iven that many persons prefer sex without condoms and the new labeling clarifying that condoms may not be as effective as desired or imagined, many people may chose [sic] to simply have sex, forego the condom, and take their risks.'' In contrast, two comments stated that the FDA condom labeling proposal overstated condom effectiveness, and lacked sufficient balance with too little scientific detail. These two comments stated that the proposal alternates between complexity that makes it difficult to understand and scientific imprecision.

(Response) After consideration of the many comments on this and related risk messaging principles, and based on the results of its label comprehension study, FDA concluded that the labeling in its draft special controls guidance document created an unacceptable level of confusion and misunderstanding. FDA also concluded, consistent with findings from its label comprehension study, that putting more scientific words and phrases into the limited space available for latex condom labeling would only lead to more consumer confusion. The latex condom labeling now recommended in the intended final special control guidance document has focused the message of latex condom intended use and simplified the message on differential effectiveness.

(Comment 15) Some comments acknowledged a need for a two tier message regarding the degree of protection afforded by condoms for different STIs, but stated that the message needed to remain simple. Some comments stated the key message is that although condoms provide less protection against STDs such as genital herpes and human papillomavirus, they do provide some protection.

(Response) FDA acknowledges the challenge of crafting a latex condom message that ensures that consumers not only understand the significant overall clinical benefits of latex condom use, but also understand the differing levels of protection against the various STIs. FDA continues to believe that it is important for condom labeling to provide information about differential effectiveness against STIs. Clearer information about differential risks and benefits of condom use can lead to better choices by individuals who seek to protect themselves by using condoms. In its intended final special controls guidance, FDA has refined the latex condom effectiveness message to convey this information more clearly.

3. Pregnancy

(Comment 16) One comment stated that the FDA proposed labeling for intended use was incomplete because it did not address protection against pregnancy.

(Response) FDA agrees with this comment and the intended final special controls guidance includes pregnancy protection in the primary statement of intended action.

(Comment 17) Several comments commended FDA for recommending inclusion of a table in the labeling with comparative efficacy rates for different barrier contraceptive options. Many comments suggested updating the table and presenting efficacy data on all contraceptive options. Other comments suggested including rates for both 'typical use' and 'perfect use' so consumers could see the beneficial effect of correct and consistent latex condom use. A few comments suggested that effectiveness be presented as success rates, not failure rates. One comment stated that FDA should not require such a table because it is not useful, would be confusing, and would tend to discourage condom use.

(Response) FDA agrees with the many comments in favor of including information on comparative contraceptive effectiveness. The intended final guidance recommends inclusion of up-to-date contraceptive effectiveness information comparing the percentage of women experiencing unintended pregnancy during 1 year of use of latex condoms with rates experienced during 1 year of use of other contraceptive options available in the United States including drugs, devices, and methods of permanent sterilization. The guidance recommends at minimum inclusion of typical use rates, but this does not preclude inclusion of perfect use rates. To permit manufacturers flexibility to fit contraceptive effectiveness information in their labeling and accommodate new data as it becomes available, the guidance no longer provides a specific recommended table format.

Regarding whether contraceptive effectiveness information should be expressed as ''success'' or ''failure,'' FDA notes that contraceptive studies evaluate pregnancy as the primary outcome measure. The statistical hypothesis and analysis is built around the pregnancy rate, and this is not easily transposed to a ''success'' rate. Therefore, FDA continues to recommend that these data be presented as pregnancy rates associated with the use of condoms or other methods, but does not mandate that the term ''failure'' be used in labeling.

The agency believes that providing contraceptive effectiveness information will not confuse consumers or discourage condom use. Rather, FDA believes that this information will help consumers to determine whether latex condoms, available without a prescription, will sufficiently address their contraceptive needs, or whether they should seek other options, including those that may require consulting a health care provider. In keeping with this purpose, the intended final guidance also recommends that contraceptive effectiveness information be accompanied by a statement advising consumers to consult a health care provider if they have any questions about contraception, particularly because of health reasons for avoiding pregnancy.

4. STIs

(Comment 18) One comment stated that the labeling in the draft guidance that described the differential effectiveness of condoms against Group I and Group II STIs should include a complete list of the STIs in each group.

(Response) FDA declines to recommend that labeling addressing the degree of STI protection contain a complete list of STIs falling within each group. Based on the results from FDA's label comprehension study, which indicated that the message on this point in the draft guidance was not well understood, the agency is concerned that including such a list might be more confusing than helpful. FDA's intended final special controls guidance recommends a simplified message on this point, which includes examples of each type of STI, and also directs consumers to consult a health care provider or public health agency for more information on condoms or STIs.

(Comment 19) Several commenters expressed concern that latex condom labeling should not lose sight of the primary message that condoms are highly effective against HIV infection, the most serious of all STIs. Some of these comments also emphasized the importance of distinguishing between condom attributes and user behavior, i.e., to emphasize the protective benefit if used properly.

(Response) None of the new studies reviewed by FDA since publication of the 2005 proposed rule uncovered any new information to detract from FDA's earlier finding that condoms are effective against HIV/AIDS, arguably the most serious STI because of its devastating consequences. Consistent with this evidence, FDA's intended final special controls guidance recommends labeling that specifically reflects the conclusion that condoms are effective against HIV/AIDS. Recommended labeling also indicates that to get the most protection from latex condoms, consumers should use them correctly every time they have sex.

5. Correct and Consistent Use

(Comment 20) One comment emphasized that user behavior concepts such as correct use and consistent use are true for almost all devices and drugs but do not belong in the statement of intended action. This comment went on to state that precautions to ensure correct and consistent use are important considerations for optimizing effectiveness and should be placed elsewhere on the labeling. This comment also noted that stating that condoms do not *eliminate* risk is redundant with the statement that condoms *help to reduce* risk and is therefore unnecessary.

(Response) FDA agrees with this comment in part. FDA's intended final guidance recommends a simple statement of intended action, that latex condoms are intended to prevent pregnancy, HIV/AIDS, and other STIs. Because information about optimal use conditions and their effect on risk reduction also deserves labeling prominence, the intended final special control guidance recommends that a statement emphasizing the importance of correct and consistent use be included in a section on the retail package entitled ''Important Information.'' In addition, the guidance recommends specific directions and precautions to help ensure such use. With regard to the question of redundancy, FDA believes that it is useful and appropriate that condom labeling explicitly reflect the results of scientific studies, which indicate that risk reduction from condoms is not 100 percent, and therefore continues to recommend a specific statement that condoms do not completely eliminate the risk of pregnancy and STIs.

(Comment 21) One commenter stated that FDA's recommended language for the rear panel of the condom retail package was not accurate because it did not contain the statement that condoms must be used consistently and correctly to provide benefit. This commenter recommended that a new section be included in condom labeling titled ''Consequences of Incorrect and Inconsistent Condom Use,'' which would include the statement ''With the exception of genital herpes and HIV, we have no clinical studies that show any risk reduction from inconsistent condom use * * *.'' Elsewhere the same commenter noted that none of the studies in HIV sero-discordant couples asked about correct use. Another commenter made a related point, stating ''Although 'correct and consistent use' appears almost 15 times [in the preamble to the proposed rule] almost all condom use studies with an STI outcome actually only measured consistent condom use. The word 'correct' should be struck from the [rulemaking] document when it occurs in this context.''

(Response) These comments do not disagree with FDA's view that condom labeling should communicate that correct and consistent use are important to obtain the maximum benefit from a latex condom. FDA agrees that the correctness of condom use is more difficult to evaluate in an epidemiologic study than whether or not the condom was used for every act of intercourse. Nevertheless, FDA believes that condom effectiveness is in part a function of correct use, and therefore that labeling should communicate the importance of correct use to achieve best results.

In the intended final special control guidance, both correct and consistent use are addressed in the section called ''Important Information'' on the rear panel of the recommended labeling, with a recommended statement which reads: ''To get the most protection from a latex condom, use one correctly every time you have sex.'' In addition, the recommended labeling contains directions for use and precautions to help ensure correct and consistent use, including the reminder to use a new condom for each act of sex. The intended final special control guidance also recommends labeling addressing the degree of STI protection afforded by condoms, which describes that the reduction in risk of STIs afforded by latex condoms results from their ability to provide a barrier against the source of infection, and elaborates on the difference in effectiveness against STIs that are spread by contact with the head of the penis (an area that a condom covers) and those also spread by contact with infected skin not covered by the condom. FDA believes it is understood in this discussion of how condoms achieve their effect that the condom must in fact be used to be effective. FDA believes that the recommended labeling appropriately and accurately communicates the importance of using latex condoms correctly and consistently to obtain their benefits.

6. Risk Reduction

(Comment 22) One comment stated that FDA should substitute ''risk reduction'' for words such as ''prevent/prevention'' and ''protect/protection'' to avoid the perception that risk reduction is total (i.e., 100 percent).

(Response) In the intended final special control guidance, FDA recommends an initial statement of the intended action of condoms, which includes an example stating that ''Latex condoms are intended to prevent pregnancy, HIV/AIDS, and other sexually transmitted infections.'' The agency believes that this is an example of an appropriate, plain language statement of the intended action of a latex condom. FDA agrees, however, that it is important that consumers appreciate that risk reduction offered by condoms is not complete. In language recommended for inclusion on the rear panel of the retail package in a box entitled ''Important Information,'' the intended final guidance recommends a statement, ''Latex condoms do not completely eliminate the risks of pregnancy and sexually transmitted infections.'' The guidance also recommends the ''Important Information'' include a statement characterizing latex condoms as reducing the risk of STI transmission. Although the recommended wording is not identical to the language suggested by the commenter, FDA believes that the recommended labeling clearly conveys that use of a latex condom does not guarantee complete elimination of risks of pregnancy or STIs. Consistent with these statements on the outer package, the recommended package insert also contains a section called ''Degree of STI Protection'' which describes the relative risk reduction that can be expected for STIs that differ in the way that they are transmitted.

(Comment 23) One comment stated that FDA should recommend latex condom labeling to include a data table showing the amount of risk reduction afforded by condoms for the common STIs. This comment indicated that the table should include estimates for ''perfect use'' and ''typical use,'' further suggesting that ''typical use'' is a synonym for ''inconsistent use.'' Another comment recommended that latex condom labeling should give information on differential effectiveness in quantitative terms. That is, labeling should present the amount of risk reduction provided by latex condom use, numerically for each STI.

(Response) FDA disagrees with these comments because the data are not sufficiently developed to provide meaningful numbers to consumers.

(Comment 24) One comment recommended the statement ''For STIs however such as gonorrhea/chlamydia, which are much more infectious [than HIV], incorrect or inconsistent condom use can very quickly lead to an infection'' be included in a new section called ''Consequences of Incorrect and Inconsistent Condom Use.''

(Response) FDA does not agree the previous statement should be included in condom labeling because we are not aware of scientific studies supporting the conclusion that ''incorrect or inconsistent condom use can very quickly lead to an infection'' for certain STIs. The temporal relationship between incorrect or inconsistent condom use and infection has not been measured systematically (with the exception of the 2006 Winer et al. study who evaluated ''always,'' ''inconsistent,'' and ''almost never'' condom use and incident HPV infection). We agree with the commenter's implicit premise that, to get the most protection from a latex condom, one should use a condom correctly every time one has sex and the recommended labeling reflects this accordingly.

(Comment 25) Two comments stated that latex condom labeling should discuss the difference between the degree of risk reduction afforded by a latex condom when used correctly during a single act of penile-vaginal intercourse compared with degree of risk reduction accumulated during typical use over time during many acts of penile-vaginal intercourse. The comments stated that the degree of risk reduction is higher during a single act compared to cumulative risk reduction over many acts of intercourse.

(Response) Although FDA agrees in principle with the concept that risk is lower during a single event compared to overall risk from multiple possible exposures, it is important to note that all of the studies evaluated by FDA looked at cumulative risk over many possible exposures. None of the studies FDA reviewed evaluated latex condom effectiveness against STIs during a single act of intercourse between an uninfected person and an infected partner. FDA does not believe that adding a discussion of hypothetical risk reduction during a single use would improve the latex condom label.

(Comment 26) Several comments stated that the latex condom labeling recommendations in the draft guidance document focused on penile-vaginal sex and do not specifically address oral sex or anal sex. Some commenters suggested that labeling should be revised to specifically indicate that condoms help prevent transmission of STIs between the penis and mouth or rectum. Other comments stated that FDA's draft guidance generically refers to sexual contact without stating that scientific data are only available on risk reduction provided by a condom during penile-vaginal intercourse. One comment suggested that the rule and guidance document need to be ''clear * * * that we are talking about the use of the male latex condom as used in vaginal intercourse.'' Another indicated that FDA should view condom use ''for everything but penile-vaginal sex [as] 'off-label'.''

(Response) Like the draft guidance, the labeling recommendations in the final guidance document do not specifically address oral or anal sex. This is not a change from the current labeling of condoms and is reflective of the lack of premarket clearance or approval submissions requesting an indication for use specifically for oral or anal sex. Although most of the reliable epidemiological data about latex condoms and STIs come from studies conducted in populations who engage in penile-vaginal intercourse, a meta-analysis evaluated a number of studies that tested behavioral interventions designed to increase condom use during all forms of sexual contact and concluded that there was an overall decrease in STIs from increased condom use (Ref. 2). Other scientific information about the basis of latex condom effectiveness against STIs—which indicates that latex condoms reduce the transmission of STIs to which they provide a physical barrier—is applicable to sexual contact between the penis and mouth or rectum. FDA believes the labeling recommendations reflect the information available.

7. Directions for Use and Precautions

(Comment 27) One comment stated that the directions for use in the FDA proposal are outdated and include steps for which there is no underlying reason, e.g., squeeze air out of condom tip. This comment pointed to a simplified set of five steps for correct condom use, developed by the Information and Knowledge for Optimal Health (INFO) Project, Johns Hopkins Bloomberg School of Public Health (Ref. 5).

(Response) FDA reviewed the five-step directions for use of condoms recommended by the INFO Project, and some of its approach was adopted in the intended final special control guidance. FDA also included some of its own general recommendations for developing medical device patient labeling, such as recommendations for the use of diagrams.

(Comment 28) One comment suggested modification of the storage precaution, from ''Store condoms in a cool, dry place'' to ''Avoid condom exposure to direct sunlight or storage for prolonged periods at temperatures above 100 F.''

(Response) FDA agrees in principle with this comment and has adopted it in the following slightly revised format in the intended final special controls guidance: ''Avoid exposure of the condom to direct sunlight. Store latex condoms in a cool, dry place (below 100° F).'' FDA notes that the model language in the guidance may be varied so long as it provides appropriate directions for use and precautions that contribute to ensuring safety and effectiveness of the specific condom in question.

(Comment 29) One comment requested that the directions for use in the labeling be in boldface font.

(Response) FDA does not agree with this comment. Highlighting techniques, such as bold, are used to emphasize important words or phrases, or for headings. Bolding all the directions for use would overdo this highlighting technique, and could decrease the impact of the directions.

(Comment 30) Another comment stated that the directions for use should include another bullet explaining how to properly dispose of a latex condom.

(Response) FDA agrees with this comment and has added a recommendation in the intended final special controls guidance to include in the directions for use a direction on how to properly dispose of a latex condom.

8. Additional Information

(Comment 31) One comment stated that latex condom labeling should include a recommendation that sexually active persons seek advice from a health care professional and that sexually active persons be vaccinated against HBV and HPV.

(Response) FDA's intended final special controls guidance recommends that latex condom labeling include advice to consumers to contact a health care provider if the consumer believes that he/she may have an STI, as well as directing consumers to contact a health care provider or public health agency for more information on latex condoms or STIs. FDA believes this labeling, which is similar to the first element suggested by the comment, is appropriate in light of the recognition that condoms reduce, but do not eliminate, the risk of STIs. Consumers who believe they are infected with an STI and are using condoms to reduce the risk that they will transmit that STI to their partner should also seek advice from a health care practitioner, because treatment options may be available that will not only benefit the infected person, but will also help to further reduce (or eliminate) the risk of STI transmission. Advising consumers who may already be infected with an STI to complement condom use with seeking advice from a health care practitioner thus helps to ensure the safe and effective use of condoms for STI prevention. Similarly, FDA's recommendation that labeling alert consumers to contact a health care provider or public health agency for more information on latex condoms or STIs complements the labeling recommendations regarding the degree of protection against different types of STIs. This labeling will help ensure safe and effective use of condoms by alerting consumers to additional resources that can expand on the basic information regarding STI transmission provided by the labeling and also help the consumer evaluate their individual circumstances.

However, FDA believes that it would be inappropriate for latex condom labeling to advise all sexually active persons to be vaccinated against HPV and HBV in part because these vaccines are not universally indicated for ''all sexually active individuals.'' For example, the currently available HPV vaccine is not approved for use in men. The HBV vaccine is indicated only for populations at risk for HBV. A recommendation to be vaccinated against HPV and/or HBV should be offered by a health care professional after consultation with the individual.

(Comment 32) One comment recommended that FDA should work with NIH, CDC, and other research colleagues to monitor the impact of the new labeling and to learn how to better reduce the adverse consequences of sex.

(Response) This comment did not address the substance of the rulemaking or labeling recommendations. If important new evidence becomes available, FDA may reconsider its approach in light of that evidence.

(Comment 33) A few comments commended FDA for its labeling proposal but warned that it should avoid additional educational information about social behaviors or public health programs. These comments stated that this kind of information is not appropriate for latex condom labeling. Another comment asked that references to pregnancy and HIV programs be placed in the labeling.

(Response) FDA believes that the purpose of latex condom labeling is to adequately identify the product and its intended action, with information about the product, including adequate directions for use and any other necessary cautions or warnings, to ensure safe and effective use. As discussed earlier, FDA is including as recommended labeling a statement that consumers should consult a health care practitioner or public health authorities for more information about condoms or STIs. This labeling complements the recommended labeling regarding the degree of protection against different types of STIs, which FDA's label comprehension study and numerous comments indicated needed to be kept simple in order to be well understood. By alerting consumers to additional resources that can expand on the basic information regarding STI transmission provided by the labeling, and also help the consumer evaluate their individual circumstances, the recommended labeling regarding contacting a health care practitioner or public health agency will help to ensure the safe and effective use of latex condoms.

E. Comments in Response to FDA's Specific Requests

FDA's 2005 proposed rule included specific requests for comments. Several of the specific requests related to latex condoms with spermicidal lubricant containing N–9. As discussed in the introductory paragraph of section I, FDA continues to review the comments it received related to that device. FDA also specifically requested comments on whether its labeling recommendations should include more detailed information on the prevention of genital HPV infection and information on different approaches for prevention of cervical cancer (FDA responded to one comment related to this request in section III.D.8). Finally, FDA specifically requested comment on potential special controls for nonlatex condoms without N–9. FDA received the following comments in response to FDA's requests.

1. Human Papillomavirus (HPV)

(Comment 34) In response to FDA's specific request related to HPV, one commenter stated that ''[c]ondoms can reduce the transmission of seminal fluid carrying the human papillomavirus. Therefore, decreasing the direct effect of these fluids on the cervix may be helpful in decreasing the risk of cervical dysplasia and neoplasia. It would be appropriate for labels to indicate that HPV still can be acquired through direct skin contact in areas not protected by the condom.''

(Response) FDA's labeling recommendations in the intended final special controls guidance document are consistent with this comment. FDA's labeling recommendation is that the package insert indicate that latex condoms reduce the risk of transmitting STIs by providing a barrier against the source of infection but also include statements that ''Latex condoms are less effective against STIs, such as Human Papillomavirus (HPV) and herpes. These STIs can also be spread by contact with infected skin that is not covered by the condom.''

2. Nonlatex Condoms Without Nonoxynol-9

(Comment 35) One comment indicated that consumers should be aware that latex condoms might cause an allergic reaction and the use of a nonlatex condom might reduce this risk. The comment noted that ''special controls beyond evidence-based labeling do not appear to be warranted.'' Another comment recommended that FDA require that packaging between latex condoms, latex condoms with N–9, natural membrane condoms, and novelty condoms look ''clearly different.''

(Response) FDA appreciates the information submitted and intends to consider these comments when FDA evaluates the regulatory approach to these devices.

F. Implementation

(Comment 36) One comment stated that the 1-year period proposed for implementing new condom labeling for latex condoms legally marketed before the effective date of this final rule is unrealistically short. This comment said it will take approximately 24 months, not 12 months, to implement all the required changes because the draft labeling may necessitate changes to packaging with its requisite capital equipment changes.

(Response) In the final guidance, FDA has shortened the statement of intended action to be placed on the individual foil packet (primary package). As a result of this change, a different size foil package for the individual condom should not be needed. FDA has also shortened the recommended statements to be included in the package insert and made more clear the flexibility permitted to manufacturers to determine how to present certain elements, such as contraceptive effectiveness information. Therefore, FDA does not believe that capital equipment changes will be needed to implement this special control. In addition, as discussed in section II, latex condoms legally marketed before the effective date of this final rule will be expected to comply with the requirement of special controls within 11 months after the effective date, as was proposed. However, the effective date of this final rule will be 60 days after publication, not 30 days as anticipated, so manufacturers will have a total of 13 months after publication to comply with the requirement of special controls.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not an economically significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA does not believe that the final rule will have a significant economic impact on a substantial number of small entities, but recognizes the uncertainty of its estimates. In the proposed rule the agency solicited but did not receive specific comments on its estimates and methodology of analysis of the impact of the rule on small businesses.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $130 million, using the most current (2007) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Background

The purpose of this final rule is to amend the classification regulation for condoms to designate a labeling guidance as a special control for latex condoms. As discussed earlier in this preamble, latex condoms are currently classified into class II in accordance with section 513 of the act. The special controls guidance identifies particular issues associated with these devices and recommends labeling to address those issues. The benefit of this final rule is that establishing the labeling guidance as a special control ensures that manufacturers will provide consumers with the information they need to make an informed decision regarding the use of latex condoms and to use them safely and effectively. The labeling guidance helps ensure that information provided to consumers does not undervalue the overall STI-risk reduction provided by latex condom use, but does not exaggerate the effectiveness of latex condoms against certain types of STIs. More specific information about the effectiveness of latex condoms with respect to pregnancy and STI transmission, as well as clearer directions for use and precautions about how to obtain the maximum benefit from latex condoms, can lead to better choices by individuals who seek to protect themselves against unintended pregnancy and STIs. Establishing a rule designating as a special control a guidance document that contains labeling recommendations, rather than establishing a labeling regulation, provides both the agency and manufacturers greater flexibility and will result in providing consumers with any new or enhanced information more quickly. The agency believes this special control will, together with the general controls, provide reasonable assurance of the safety and effectiveness of these devices.

B. Affected Entities and Scope of Effect

The final rule will affect persons responsible for the labeling of latex condoms, which, in most cases, will be manufacturers of condoms, including repackagers. Manufacturers of latex condoms, including repackagers, will need to address the issues identified in the special controls guidance document. A firm need only show that its device meets the recommendations of the guidance document or in some other way provides equivalent assurances of safety and effectiveness. To meet the recommendations of the special controls guidance document, wording on the retail package, including the principal display panel, the primary condom package (individual foil), and package insert will most likely need changes to conform to the guidance document.

Agency records show there are approximately 35 entities that manufacture or repackage latex condoms affected by this final rule. FDA does not track the number of different product and package combinations (stockkeeping units (SKUs)) on the market. Based on data FDA received from industry, FDA estimates that currently there are between 500 and 1,000 SKUs on the market that will need labeling changes. If the products are sold with a retail package, the wording on each of these SKUs will need to be changed. Because manufacturers can often use the same individual foil and package inserts across their product lines, the number of versions of foil and insert labeling that require changes will be less than the number of SKUs.

Based on the agency's experience with the industry and anecdotal information from manufacturer and retail Web sites, FDA estimates that there will be a total of 802 to 1,605 labeling changes to retail packages, individual foils, and package inserts. FDA assumed that 95 percent of the SKUs (475 to 950) are marketed with 3 levels of labeling (a retail package, individual foil, and package insert), and the remaining 5 percent have 2 levels (a foil and package insert). For the SKUs with three levels of labeling, FDA further assumed that for every 3 retail package redesigns there would be 1 foil label redesign, and for every 4 retail package redesigns, there would be 1 package insert redesign. FDA based these assumptions on FDA's knowledge that a single condom type is often sold in several retail packages containing different numbers of condoms, in which case retail packages would be different for each SKU but package inserts and foil labels would be shared by multiple SKUs. The distribution of the different labeling that would need to be redesigned is listed in Table 1 of this document and includes 475 to 950 retail packages, 183 to 367 foils, and 144 to 288 inserts. (Sample calculation: (500 x 0.95 / 3) + (500 x 0.05) foils and (500 x 0.95 / 4) + (500 x 0.05) inserts.)

C. Costs of Implementation

Frequent package changes or redesigns are standard business practice in the consumer healthcare products market. Manufacturers with products intended for retail sales will have established routines for product relabeling and employees with the technical expertise to implement labeling changes. The cost to relabel a product can be broken into three basic components: regulatory, graphics, and manufacturing. The regulatory component includes determining what changes are necessary, drafting the wording for the new labeling, and coordinating the review and revisions. The graphics component includes preparing the layouts, proofs, and printing. Finally, the manufacturing component includes incorporating the new labeling into the manufacturing system, discarding old labeling inventory, and making any changes to the packaging line to accommodate the new labeling, if necessary.

The final rule designates a special controls guidance document that recommends changes to wording and some additional text. Many of the labeling recommendations are similar to statements in existing condom labeling, but are being updated to reflect current information. These changes should not require major changes in the design or layout of existing labeling and FDA believes that the changes can be incorporated without having to increase the dimensions of any of the labeling. As discussed elsewhere in the preamble, FDA received one comment that suggested that manufacturers might need to increase package size to accommodate the proposed wording. After conducting a label comprehension study and considering other comments and information, FDA shortened and reworded the recommended labeling. In addition, the intended final special controls guidance does not specify a particular format for the contraceptive effectiveness information. The agency believes that with the changes to the wording and increased flexibility in presentation, we have addressed these concerns.

The itemized cost estimates used in this analysis were derived from a study performed for FDA by Eastern Research Group, Inc. (ERG), an economic consulting firm, to estimate the economic impact of the 1999 Over-the-Counter Human Drug Labeling Requirements final rule (64 FR 13254, March 17, 1999).[8] Because the packaging requirements for latex condoms are similar to those of many over-the-counter (OTC) drugs, the cost to redesign and print the labeling for OTC drugs is an appropriate proxy for the estimated costs to redesign and print condom labeling. For this analysis, cost estimates were adjusted to account for inflation using the producer price index (PPI) for finished consumer goods, and current wage rates specific to the medical device industry were substituted for the wages used by ERG in the original OTC drug labeling impact study.[9]

FDA estimates that the regulatory component of each labeling redesign would require between 8 to 16 hours per SKU. Using a wage rate of $44.17, the incremental cost of the one-time regulatory component cost to redesign would be $353 to $707 per labeling redesign (8 to 16 hours x $44.17/hour).[10] The one-time cost of the graphic component was estimated to be $640 per labeling redesign.[11] The one-time cost of the manufacturing component, which included the incorporation of the new labeling into the manufacturing system and discarding the remaining inventory of the old labeling, was estimated to require between 3 and 5 hours per label. Using the wage rate of $21.84 for a production employee, this cost would range from about $66 to $109 per label (3 (to 5) hours x 21.84/ hour).[12] The value of the old labeling inventory would vary greatly depending on the type and complexity of the labeling, the average sales per SKU, and the length of the implementation period granted. Based on the ERG study, with a 13-month implementation period FDA estimates that the one-time inventory loss would range from $478 to $1,913 per foil or package insert and from $1,435 to $5,738 per carton.[13]

FDA believes that by providing manufacturers with a 13-month period to achieve compliance for those latex condoms that are legally marketed before the rule is effective, there will be

[8] Eastern Research Group, Inc., Cost Impacts of the Over-the-Counter Pharmaceutical Labeling Rule (March 1999). Contract number 223–94–8031, Docket No. 96N–0420, OTC Volume 28 FR, Division of Dockets Management.

[9] The ERG cost estimates were based on estimates made in 1998. The annual PPI for finished consumer goods rose by 27.5 percent between 1998 and 2007 (from 130.7 to 166.6, *http://www.bls.gov*). Wage estimates are from the Bureau of Labor Statistics, May 2007 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 339100—Medical Equipment and Supplies Manufacturing (*http://www.bls.gov*).

[10] Mean hourly wage for a compliance officer, SOC 13–1041, in NAICS 339100 is $31.55, which was increased by 40 percent to account for employee benefits and equals $44.17 (*http://www.bls.gov*).

[11] ERG estimated the cost at $500 per redesign. Adjusting for inflation, the cost would be $638 ($500 x 1.275) and was rounded to $640. (See footnotes 7 and 8).

[12] Mean hourly wage for the average production worker is $13.75, SOC 51–0000, in NAICS 339100, which was increased by 40 percent to account for employee benefits and equals $19.25 (*http://www.bls.gov*).

[13] ERG estimated that when there was no implementation period granted, the average inventory loss for OTC drug container labels ranged from $1,500 to $6,000 for small to medium sized OTC drug firms. With a 14-month implementation period that loss decreased by 3/4. The value of carton inventory was estimated to be about 3 times greater than container labels. Allowing for inflation (see footnote 6) the 0-month estimates are approximately $1,913 and $7,650, respectively (e.g., $1,500 x 1.275).

enough time for them to sell their existing product inventory and have enough newly labeled inventory on hand to meet demand without a disruption in supply. The total estimated incremental one-time costs to the industry for each component of a labeling redesign was calculated by multiplying the cost per label by the number of labels affected and are presented in table 2 of this document. Because of the uncertainty of the estimates, only the lowest and highest estimated costs are presented rather than reporting the intermediate values that would be obtained using other pairings of high with low values in the ranges estimated. The total one-time incremental cost to the industry was estimated to be between $1.7 million and $9.0 million. The cost to individual firms to comply with this rule would vary greatly depending on the number of products they produced, how the products were packaged, and the sales volume. As stated earlier in this document, frequent labeling changes are a cost of doing business in the consumer healthcare products market and firms would have the skills necessary to comply with this rule. Because the steps followed for a firm-initiated change are the same as for regulatory change, the labeling recommendations could be incorporated at the time a firm is implementing a firm-initiated labeling change for little additional cost, and thus, the economic impact will be mitigated by the number of firm-initiated labeling changes made during the implementation period. In addition, because most labeling equipment can handle different labeling sizes and types and because there are a large number of companies available that can provide contract labeling services, FDA does not believe that any manufacturer would incur major costs such as the need to purchase new labeling or packaging equipment as a result of this rule.

D. Regulatory Flexibility Analysis

There are about 12 domestic entities that manufacture or repackage condoms. The Small Business Administration (SBA) has established criteria to identify small entities in given industries using the North American Industry Classification System Code (NAICS). The NAICS for manufacturing latex condoms is 326299 (All Other Rubber Product Manufacturing). Firms in this industry are considered small if they have fewer than 500 employees. Ten of the 12 domestic entities affected by this rule are small as defined by SBA.

The one-time cost to relabel, including the inventory loss, will range from about $3,000 to $9,000 per unique product SKU. When the SKUs differ only by the quantity per carton the one-time cost per SKU are even less, ranging from about $2,100 to $6,400 because the foil and insert labels are the same.

As discussed earlier in this document, while the cost to the industry to revise latex condom labeling is small, FDA lacks sufficient specific information on the distribution of costs and characterization of the industry to certify that this rule would not have a significant economic impact on a substantial number of small entities. Thus, while FDA does not believe that this final rule will have a significant effect on a substantial number of small entities, FDA recognizes the uncertainty of the estimates.

TABLE 1.—ESTIMATED NUMBER OF LABEL DESIGNS THAT MAY NEED TO BE MODIFIED

Component	Low-End Estimate	High-End Estimate
Cartons	475	950
Foils	183	367
Inserts	144	288
Total	802	1,605

TABLE 2.—ESTIMATED RANGE OF COMPLIANCE COSTS BY FUNCTION

Component	Range	Hours	Wage/Hour	Cost/Label	Number of Labels	Total	
						Low	High
Regulatory	Low	8	$44.17		802	$283,395	
	High	16			1,605		$1,134,286
Graphic	Low			$640	802	$513,280	
	High				1,605		$1,027,200
Manufacturing	Low	3	$21.84		802	$52,547	
	High	5			1,605		$175,266
Inventory—foil & insert	Low			$478	327	$156,306	
	High			$1,913	655		$1,253,015
Inventory—carton	Low			$1,435	475	$681,625	
	High			$5,738	950		$5,451,100
Total Costs						$1,687,153	$9,040,867

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision that preempts certain state requirements ''different or in addition to'' certain federal requirements applicable to devices. 21 U.S.C. 360k; *Medtronic* v. *Lohr*, 518 U.S. 470 (1996); *Riegel* v. *Medtronic*, 128 S.Ct. 999 (2008). In this rulemaking, FDA has determined that general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, and that there is sufficient information to establish special controls to provide such assurance. FDA has therefore imposed a special control to address the risks of unintended pregnancy, transmission of sexually transmitted infections, and incorrect or inconsistent use. This special control creates ''requirements'' for specific medical devices under 21 U.S.C. 360k, even though product sponsors have some flexibility in how they meet those requirements. *Papike* v. *Tambrands, Inc.*, 107 F.3d 737, 740–42 (9th Cir. 1997).

In addition, as with any Federal requirement, if a State law requirement makes compliance with both Federal law and State law impossible, or would frustrate Federal objectives, the State requirement would be preempted. See *Geier* v. *American Honda Co.*, 529 U.S. 861 (2000); *English* v. *General Electric Co.*, 496 U.S. 72, 79 (1990); *Florida Lime & Avocado Growers, Inc.*, 373 U.S. 132, 142–43 (1963); *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941).

The preemptive effects are the result of existing law set forth in the statute as interpreted in decisions of the United States Supreme Court. FDA therefore has not sought separate comment on the preemptive effect of this action because it is not seeking independently to preempt state law beyond the effects of 21 U.S.C. 360k or existing case law.

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information, but designates as a special control a guidance document that contains collections of information that are subject to review by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501–3520). Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the submission to OMB of the proposed information collection provisions of that guidance document, Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300, which contains further information about the paperwork burden for that guidance. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in the guidance designated as a special control by this final rule and announcing the availability of the final guidance as approved. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VIII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

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List of Subjects in 21 CFR Part 884

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 884 is amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 884.5300 is revised to read as follows:

§ 884.5300 Condom.

(a) *Identification.* A condom is a sheath which completely covers the penis with a closely fitting membrane. The condom is used for contraceptive and for prophylactic purposes (preventing transmission of sexually transmitted infections). The device may also be used to collect semen to aid in the diagnosis of infertility.

(b) *Classification.* (1) Class II (special controls) for condoms made of materials other than natural rubber latex, including natural membrane (skin) or synthetic.

(2) Class II (special controls) for natural rubber latex condoms. The guidance document entitled ''Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300'' will serve as the special control. See § 884.1(e) for the availability of this guidance document.

Dated: October 28, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–26825 Filed 11–7–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9430]

RIN 1545–BH99

Information Reporting for Discharges of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to information returns for cancellation of indebtedness by certain entities. The temporary regulations will avoid premature information reporting from certain businesses that are currently required to report and will reduce the number of information returns required to be filed. The temporary regulations will impact certain lenders who are currently required to file information returns under the existing regulations. The text of these temporary regulations also serves as the text of the proposed regulations as set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on November 10, 2008.

Applicability Date: For dates of applicability, see § 1.6050P–1T(h).

FOR FURTHER INFORMATION CONTACT: Barbara Pettoni at (202) 622–4910 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6050P relating to information reporting for cancellation of indebtedness by certain entities. The amendments will reduce the number of information reports required to be filed under section 6050P.

In general, section 6050P requires certain entities to file information returns with the IRS, and to furnish information statements to debtors, reporting discharges of indebtedness of $600 or more. As originally enacted by the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66 (107 Stat. 312, 531–532 (1993)), section 6050P applied solely to ''applicable financial entities,'' which was then defined to include only financial institutions, credit unions, and Federal executive agencies.

In 1996, final regulations were published implementing section 6050P. See TD 8654, 61 FR 262 (January 4, 1996) (the 1996 regulations). The 1996 regulations required applicable financial entities, as then defined, to issue Forms 1099–C, ''Cancellation of Debt,'' upon the occurrence of one of several ''identifiable events'' as provided in § 1.6050P–1(b)(2)(i)(A) through (H). One of these identifiable events requiring the issuance of a Form 1099–C was the expiration of a ''non-payment testing period'' pursuant to § 1.6050P–1(b)(2)(i)(H). The 1996 regulations created a rebuttable presumption (the ''36-month rule'') under § 1.6050P–1(b)(2)(iv) that this period expired if a creditor had not received a payment for 36 months. Section 1.6050P–1(b)(2)(iv) provides that the presumption that an identifiable event occurred can be rebutted by a creditor if the creditor had engaged in significant, bona fide collection activity.

After the issuance of the 1996 regulations, the Debt Collection Improvement Act of 1996, Public Law 104–134 (110 Stat. 1321, 368–369 (1996)) (the 1996 Act), expanded section 6050P to cover any executive, judicial, or legislative agency (as defined in 31 U.S.C. 3701(a)(4)) as well as any applicable financial entity. The 1996 Act was effective April 26, 1996. The Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106–170 (113 Stat. 1860, 1931 (1999)) (the 1999 Act), further expanded section 6050P by expanding the definition of ''applicable financial entity'' to include any organization ''a significant trade or business of which is the lending of money.'' The 1999 Act was effective for discharges of indebtedness occurring after December 31, 1999.

In 2002, the IRS and the Treasury Department published proposed regulations to reflect the changes to section 6050P. See REG–107524–00, 67 FR 40629 (June 13, 2002). The IRS received written (including electronic) comments on the proposed regulations and a public hearing was held on October 8, 2002. After consideration of the comments received, the IRS adopted the proposed regulations with amendments. See TD 9160, 69 FR 62181 (October 25, 2004) (the 2004 regulations). Section 1.6050P–2 of the 2004 regulations describes the circumstances in which an organization has a significant trade or business of lending money, thereby triggering an information reporting requirement when it cancels debt.

Reasons for Change

The 36-month rule of § 1.6050P–1(b)(2)(iv) was drafted at a time when section 6050P applied only to financial institutions, credit unions, and Federal executive agencies and did not extend to any executive, judicial, or legislative agency or any organization ''a significant trade or business of which is the lending of money.'' Since the publication of the 2004 regulations, commenters have raised the concern that the application of the 36-month rule to entities with a significant trade or business of lending money might trigger a reporting requirement even when the entity has not legally or practically discharged the debt. The IRS and the Treasury Department agree that it is appropriate to limit the application of the 36-month rule to the entities for which it was originally intended in order to avoid premature information reporting of cancellation of indebtedness income. Doing so will reduce the information reporting burden on entities that were not originally within the scope of the 36-month rule and will protect debtors from receiving information returns that prematurely report cancellation of indebtedness income from such entities.

The Treasury Department and IRS are still considering other comments received since the publication of the 2004 regulations, including a request to clarify the meaning of ''stated principal'' in § 1.6050P–1(c) and (d)(3) when it is applied to those who acquire a loan from a person other than the debtor. Section 1.6050P–1(c) provides that ''indebtedness'' for purposes of section 6050P means any amount owed to an applicable entity, including stated principal, fees, stated interest, penalties, administrative costs, and fines. Section 1.6050P–1(d)(3) further provides that, in the case of a lending transaction, the discharge of an amount other than stated principal is not required to be reported under section 6050P. Commenters have stated that it is unclear whether the simplifying rule limiting an information report to the amount of stated principal can be applied to loan acquirers. Commenters have asserted that loan acquirers might know only the aggregate amount due on the loans they are purchasing, not the breakdown of that amount into principal and accrued interest or fees. Therefore, if loan acquirers discharge an aggregate amount, it is difficult for them to determine how much is required to be reported under section 6050P. The Treasury Department and IRS is considering issuing future guidance under section 6050P to address these concerns.

Explanation of Provisions

The temporary regulations and amendments to existing regulations limit the application of the 36-month rule to the entities described in the 1993 Act. The temporary regulations avoid premature information reporting from certain entities that are currently required to report under section 6050P. Notwithstanding this limitation, the temporary regulations provide that, in the case of an entity previously subject to the 36-month rule that was required to file information returns in a tax year prior to 2008 due to application of the 36-month rule, and who failed to so file, the date of discharge is the first identifiable event, if any, described in § 1.6050P–1(b)(2)(i)(A) through (G) that occurs after 2007. Thus, any entity previously subject to the 36-month rule that has never filed an information return remains subject to the information reporting requirement upon the occurrence of any of the other identifiable events.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these temporary regulations is Barbara Pettoni, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects 26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.6050P–0 is amended as follows:
■ 1. The introductory text is revised.
■ 2. A new entry for § 1.6050P–1(b)(2)(v) is added.
■ 3. The entry for § 1.6050P–1(h) is revised.
■ 4. A new entry for § 1.6050P–1T is added.

The revisions and additions read as follows:

§ 1.6050P–0. Table of contents.

This section lists the major captions that appear in § 1.6050P–1, § 1.6050P–1T, and § 1.6050P–2.

* * * * *

§ 1.6050P–1 Information reporting for discharges of indebtedness by certain entities.

(b) * * *
(2) * * *
(v) [Reserved] For further guidance, see the entry for § 1.6050P–1T(b)(2)(v).

* * * * *

(h) Effective/applicability date.

* * * * *

§ 1.6050P–1T Information reporting for discharges of indebtedness by certain entities (temporary).

(b) * * *
(2) * * *
(v) Special rule for certain entities required to file in a year prior to 2008.

* * * * *

■ **Par. 3.** Section 1.6050P–1 is amended as follows:
■ 1. Paragraph (b)(2)(i)(H) and the heading for paragraph (h) are revised.
■ 2. A new entry for (b)(2)(v) is added.

The addition and revisions read as follows:

§ 1.6050P–1 Information reporting for discharges of indebtedness by certain entities.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(H) [Reserved]. For further guidance, see § 1.6050P–1T(b)(2)(i)(H).

* * * * *

(v) [Reserved]. For further guidance, see § 1.6050P–1T(b)(2)(v).

* * * * *

(h) *Effective/applicability date.* * * *

■ **Par. 4.** Section 1.6050P–1T is added to read as follows:

§ 1.6050P–1T Information reporting for discharges of indebtedness by certain entities (temporary).

(a) through (b)(2)(i)(G) [Reserved]. For further guidance, see 1.6050P–1(a) through (b)(2)(i)(G).

(H) In the case of an entity described in section 6050P(c)(2)(A) through (C), the expiration of the non-payment testing period, as described in § 1.6050P–1(b)(2)(iv).

(b)(2)(ii) through (iv) [Reserved]. For further guidance, see § 1.6050P–1(b)(2)(ii) through (iv).

(v) *Special rule for certain entities required to file in a year prior to 2008.* In the case of an entity described in section 6050P(c)(1)(A) or (c)(2)(D) required to file an information return in a tax year prior to 2008 due to an identifiable event described in paragraph (b)(2)(i)(H), and who failed to so file, the date of discharge is the first event, if any, described in paragraphs (b)(2)(i)(A) through (G) of this section that occurs after 2007.

(b)(3) through (g) [Reserved]. For further guidance see § 1.6050P–1(b)(3) through (g).

(h) *Effective/applicability date*—(1) *In general.* The rules in this section apply to discharges of indebtedness after December 21, 1996, except paragraphs (e)(1) and (e)(3) of this section, which apply to discharges of indebtedness after December 31, 1994, except paragraph (e)(5) of this section, which applies to discharges of indebtedness occurring after December 31, 2004, and except paragraphs (b)(2)(i)(H) and (b)(2)(v) of this section, which apply to discharges of indebtedness occurring after November 10, 2008.

(2) [Reserved]. For further guidance, see § 1.6050P–1(h)(2).

(i) *Expiration date.* The applicability of this section will expire on or before November 7, 2011.

Approved: October 28, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–26676 Filed 11–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury (''OFAC'') is amending the Iranian Transactions Regulations, to narrow the scope of existing section by revoking an authorization previously granted to U.S. depository institutions to process ''U-turn'' transfers, and to make certain other conforming and technical changes.

DATES: *Effective Date:* November 10, 2008.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Compliance, Outreach & Implementation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning the Office of Foreign Assets Control (''OFAC'') are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax on-demand service, tel.: 202/622–0077.

Background

The Iranian Transactions Regulations, 31 CFR part 560 (the ''ITR''), implement a series of Executive Orders that began with Executive Order 12613 of October 30, 1987, issued pursuant to authorities including the International Security and Development Cooperation Act of 1985 (22 U.S.C. 2349aa–9). In that order, after finding, *inter alia,* that the Government of Iran was actively supporting terrorism as an instrument of state policy, the President prohibited the importation of Iranian-origin goods and services. Subsequently, in Executive Order 12957, issued on March 15, 1995, under the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), the President declared a national emergency with respect to the actions and policies of the Government of Iran, including its support for international terrorism, its efforts to undermine the Middle East peace process, and its efforts to acquire weapons of mass destruction and the means to deliver them. To deal with that threat, Executive Order 12957 imposed prohibitions on certain transactions with respect to the development of Iranian petroleum resources. On May 6, 1995, to further respond to this threat, the President issued Executive Order 12959, which imposed comprehensive trade and financial sanctions on Iran. Finally, on August 19, 1997, the President issued Executive Order 13059 consolidating and clarifying the previous orders.

Section § 560.516 of the ITR contains authorizations with respect to certain transactions that are processed by U.S. depository institutions, as well as by U.S. registered brokers or dealers in securities. OFAC now is amending § 560.516 to narrow the scope of authority provided in paragraph (a) of this section. As amended, paragraph (a) of § 560.516 authorizes U.S. depository institutions to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, only if the transfer meets one of the conditions set forth in the sub-paragraphs to paragraph (a) and does not involve debiting or crediting an Iranian account, as defined in § 560.320 of the ITR. Prior to this amendment, sub-paragraph (a)(1) authorized such transactions when the transfer was by order of a non-Iranian foreign bank from its own account in a domestic bank to an account held by a domestic bank for a non-Iranian foreign bank. This is commonly referred to as the ''U-turn'' authorization. It is so termed because it is initiated offshore as a dollar-denominated transaction by order of a foreign bank's customer; it then becomes a transfer from a correspondent account held by a domestic bank for the foreign bank to a correspondent account held by a domestic bank for another foreign bank; and it ends up offshore as a transfer to a dollar-denominated account of the second foreign bank's customer. OFAC now is narrowing the scope of authority provided by paragraph (a) of § 560.516 by deleting sub-paragraph (a)(1) and, thereby, revoking the authorization for ''U-turn'' transfers.

The reasons OFAC is revoking this authorization include the need to further protect the U.S. financial system from the threat of illicit finance posed by Iran and its banks. This threat was highlighted in March of 2008 when the United Nations Security Council adopted Resolution 1803, which calls upon all states ''to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran...in order to avoid such activities contributing to the proliferation [of] sensitive nuclear activities, or to the development of nuclear weapon delivery systems * * *.'' Moreover, on October 16, 2008, the Financial Action Task Force (''FATF''), the world's premier standard-setting body for anti-money laundering and counter-terrorist financing (''AML/CFT''), warned for the fourth time about the risks posed to the international financial system by continuing deficiencies in Iran's AML/CFT regime, and in particular emphasized Iran's lack of effort in addressing the risk of terrorist financing. The FATF called on all countries to strengthen preventive measures to protect their financial systems from the risk.

As a result of this amendment, effective November 10, 2008, U.S. depository institutions no longer will be allowed to process ''U-turn'' transfers involving Iran, thereby precluding transfers designed to dollarize transactions through the U.S. financial system for the direct or indirect benefit of Iranian banks or other persons in Iran or the Government of Iran. OFAC is revising and republishing § 560.516 of the ITR in its entirety because, in addition to removing sub-paragraph (a)(1), OFAC also is amending this section to delete references to outdated provisions and make other minor technical changes. OFAC also is revising § 560.405 and § 560.532 of the ITR to make certain conforming changes by deleting references to outdated provisions.

Public Participation

Because the amendment of the ITR involves a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory

Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the ITR are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Banks, Banking, Brokers, Foreign Trade, Investments, Loans, Securities, Iran.

■ For the reasons set forth in the preamble, the Office of Foreign Assets Control amends 31 CFR part 560 as follows:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

■ 1. The authority citation of part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 106–387, 114 Stat. 1549; Pub. L. 110–96, 121 Stat. 1011; E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart D—[Amended]

■ 2. Revise § 560.405 to read as follows:

§ 560.405 Transactions incidental to a licensed transaction authorized.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) A transaction by an unlicensed Iranian governmental entity or involving a debit or credit to an Iranian account not explicitly authorized within the terms of the license;

(b) Provision of any transportation services to or from Iran not explicitly authorized in or pursuant to this part other than loading, transporting, and discharging licensed or exempt cargo there;

(c) Distribution or leasing in Iran of any containers or similar goods owned or controlled by United States persons after the performance of transportation services to Iran;

(d) Financing of licensed sales for exportation or reexportation of agricultural commodities or products, medicine or medical equipment to Iran or the Government of Iran (see § 560.532); and

(e) Letter of credit services relating to transactions authorized in § 560.534. See § 560.535(a).

Subpart E—[Amended]

■ 3. Revise § 560.516 to read as follows:

§ 560.516 Payment and United States dollar clearing transactions involving Iran.

(a) United States depository institutions are authorized to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer is covered in full by any of the following conditions and does not involve debiting or crediting an Iranian account:

(1) The transfer arises from an underlying transaction that has been authorized by a specific or general license issued pursuant to this part;

(2) The transfer arises from an underlying transaction that is not prohibited by this part, such as a non-commercial remittance to or from Iran (e.g., a family remittance not related to a family-owned enterprise); or

(3) The transfer arises from an underlying transaction that is exempted from regulation pursuant to § 203(b) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)), such as an exportation to Iran or importation from Iran of information and informational materials, a travel-related remittance, or payment for the shipment of a donation of articles to relieve human suffering.

(b) United States registered brokers or dealers in securities are authorized to process transfers of funds to or from Iran, or for the direct or indirect benefit of persons in Iran or the Government of Iran, if the transfer is covered in full by any of the conditions set forth in paragraph (a) of this section and does not involve the debiting or crediting of an Iranian account.

(c) Before a United States depository institution or a United States registered broker or dealer in securities initiates a payment on behalf of any customer, or credits a transfer to the account on its books of the ultimate beneficiary, the United States depository institution or United States registered broker or dealer in securities must determine that the underlying transaction is not prohibited by this part.

(d) Pursuant to the prohibitions contained in § 560.208, a United States depository institution or a United States registered broker or dealer in securities may not make transfers to or for the benefit of a foreign-organized entity owned or controlled by it if the underlying transaction would be prohibited if engaged in directly by the U.S. depository institution or U.S. registered broker or dealer in securities.

(e) This section does not authorize transactions with respect to property blocked pursuant to part 535.

■ 4. Revise paragraph (b) of § 560.532 to read as follows:

§ 560.532 Payment for and financing of exports and reexports of commercial commodities, medicine, and medical devices.

* * * * *

(b) *Specific licenses for alternate payment terms.* Specific licenses may be issued on a case-by-case basis for payment terms and trade financing not authorized by the general license in paragraph (a) of this section for sales pursuant to § 560.530. See § 501.801(b) of this chapter for specific licensing procedures.

* * * * *

Dated: November 4, 2008.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. E8–26642 Filed 11–6–08; 11:15 am]

BILLING CODE 4811–55–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–1090]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Elizabeth River, Southern Branch, VA, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Norfolk Southern #7 Railroad Bridge, at AIWW mile 5.8, across the Elizabeth River (Southern Branch) in Chesapeake, VA. Under this temporary deviation, the drawbridge may remain in the closed position on specific dates and times to facilitate structural repairs.

DATES: This deviation is effective from 5 a.m. on December 31, 2008, to 5 a.m. on January 2, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1090 and are available online at *www.regulations.gov.* They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Corporation, who owns and operates this single-leaf bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.997(e) to facilitate structural repairs.

The Norfolk Southern #7 Bridge, at AIWW mile 5.8, across the Elizabeth River (Southern Branch) in Chesapeake, VA, has a vertical clearance in the closed position to vessels of 7 feet above mean high water.

To facilitate replacement of curved tread plates on the curved segmental girders of the lift span, the drawbridge will be maintained in the closed-to-navigation position from 5 a.m. on December 31, 2008, until and including 5 a.m. on January 2, 2009.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the opening restrictions of the draw span to minimize transiting delays caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 30, 2008.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E8–26673 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2008–1046]

Drawbridge Operation Regulation: Upper Mississippi River, Clinton, Iowa, Activity Identifier; Repair and Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Clinton Railroad Drawbridge, across the Upper Mississippi River, mile 518.0, at Clinton, Iowa. The deviation is necessary to allow time for performing needed maintenance and repairs to the bridge. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given from 12:01 a.m., December 15, 2008 until 9 a.m., March 15, 2009.

DATES: This temporary deviation is effective from 12:01 a.m., December 15, 2008 until 9 a.m., March 15, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1046 and are available online at *www.regulations.gov.* They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Robert A. Young Federal Building, Room 2.107F, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FUTHER INFORMATION CONTACT: If you have questions on this notice, call Roger K. Wiebusch, Bridge Administrator, (314) 269–2378. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad Company requested a temporary deviation for the Clinton Railroad Drawbridge, across the Upper Mississippi, mile 518.0, at Clinton, Iowa to open on signal if at least 24 hours advance notice is given in order to facilitate needed bridge maintenance and repairs. The Clinton Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart. In order to facilitate the needed bridge work, the drawbridge must be kept in the closed-to-navigation position. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given from 12:01 a.m., December 15, 2008 until 9 a.m., March 15, 2009.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Clinton Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 18.7 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 15, 2008.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. E8–26671 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AH43

Schedule for Rating Disabilities; Eye

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (Rating Schedule) by updating the portion of the schedule that addresses disabilities of the eye. These amendments ensure that the schedule uses current medical terminology, provides unambiguous criteria for evaluating disabilities, and

incorporates pertinent medical advances.

DATES: *Effective Date:* This amendment is effective December 10, 2008.

Applicability Date: These amendments shall apply to all applications for benefits received by VA on or after December 10, 2008.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Policy and Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC, 20420, (727) 319–5847. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: As part of its review of the Schedule for Rating Disabilities (38 CFR part 4), VA published a proposal to amend the portion of the schedule pertaining to the eye in the **Federal Register** of May 11, 1999 (64 FR 25246–25258). Interested persons were invited to submit written comments on or before July 12, 1999. We received comments from the Disabled American Veterans, the Blinded Veterans Association, and one other interested party.

Section 4.75 General Considerations for Evaluating Visual Impairment

We proposed to add paragraph (c) to § 4.75 to codify the longstanding VA practice that when visual impairment of only one eye is service-connected, either directly or by aggravation, the visual acuity of the nonservice-connected eye must be considered to be 20/40, subject to the provisions of 38 CFR 3.383(a). Section 3.383(a) directs that when there is blindness in one eye as a result of service-connected disability and blindness in the other eye as a result of nonservice-connected disability, VA will pay compensation as if both were service-connected.

We also proposed to remove current § 4.78, which provides a method of determining the level of disability when the visual impairment is aggravated during military service. As stated in the proposed rule, § 4.78 is not consistent with VA's method of evaluating visual impairment incurred in service in one eye only, nor is it consistent with VA's statutory scheme governing VA benefits. Its application may, in some cases, result in a higher evaluation for a condition that is aggravated by service than for an identical condition incurred in service, which is not equitable. Section 4.78 is also inconsistent with the method of evaluating other paired organs, such as the hands, where only the service-connected hand is evaluated, regardless of the status of the nonservice-connected hand, subject to the provisions of § 3.383(a).

One commenter challenges the rule proposed in § 4.75(c) as contrary to legal authority and long-standing VA practice. According to the commenter, the proper rating of visual disability always considers: (1) The vision of each eye, regardless of whether the origin of the service-connected disability is one or both eyes and (2) the entire disability, regardless of whether service connection is based on incurrence or aggravation. The commenter stated that ''service connection is always bilateral in the legal sense.'' The commenter stated that VA used the term ''service connected'' in current § 4.78 in its literal sense and that the nonservice-connected visual impairment to which § 4.78 refers ''denotes the origin of the disability, not its legal status.'' The commenter further asserted that ''service connection attaches to the impairment of function or disability and not to the organ or body part per se'' and that ''service connection is accordingly established for visual impairment that is incurred in or aggravated by service and is not limited to the eye with the service-related disability.'' The commenter cited VA's Office of the General Counsel opinion VAOPGC 25–60 (9–13–60) and 38 U.S.C. 1160 in support of these assertions.

To an extent, the commenter is correct that the proper rating of visual disability always considers the vision of each eye, regardless of whether the origin of the service-connected disability is one or both eyes. However, if visual impairment of only one eye is service-connected, the vision in the other eye is considered to be normal, *i.e.*, 20/40. To do otherwise would violate 38 CFR 4.14, which provides that ''the use of manifestations not resulting from service-connected disease or injury in establishing the service-connected evaluation * * * [is] to be avoided.'' Proposed § 4.75(c) merely states long-standing VA practice in this regard.

The commenter is mistaken about the entire disability being considered, regardless of whether service connection is based on incurrence or aggravation. As 38 CFR 4.22 plainly states: ''In cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into the active service * * *. It is necessary therefore, in all cases of this character[,] to deduct from the present degree of disability the degree, if ascertainable, of the disability existing at the time of entrance into active service. * * *''

Although there are certain specified exceptions (such as 38 U.S.C. 1151 and 1160), generally the statutes governing VA benefits authorize compensation for service-connected disability only. 38 U.S.C. 101(13), 1110, 1131. Only disabilities that result from injury or disease incurred or aggravated in service may be service connected. 38 U.S.C. 1110, 1131; 38 CFR 3.310(a). VAOPGC 25–60 addressed whether VA had authority to award a 100-percent disability rating for visual impairment where there is service-connected loss or loss of use of one eye and nonservice-connected loss or loss of use of the other eye arising after service. The opinion held that VA did not have statutory authority to compensate veterans for nonservice-connected visual disability arising after service. However, Congress later provided an exception in 38 U.S.C. 1160. If a veteran has visual impairment in one eye as a result of service-connected disability and visual impairment in the other eye as a result of nonservice-connected disability not the result of the veteran's own willful misconduct and either (1) the impairment of visual acuity in each eye is rated at a visual acuity of 20/200 or less or (2) the peripheral field of vision for each eye is 20 degrees or less, VA must pay compensation to the veteran as if the combination of both disabilities were the result of service-connected disability. 38 U.S.C. 1160(a). Thus, VA's authority to consider nonservice-connected visual disability for compensation purposes is limited to the circumstances described in section 1160(a). Absent the degree of visual impairment in both eyes prescribed in section 1160(a), nonservice-connected visual disability is not compensable and therefore not to be considered when rating service-connected disability. Where a claimant has a service-connected disability of only one eye and a nonservice-connected visual impairment but not of the degree prescribed by section 1160(a) in the other eye, deeming the nonservice-connected eye as having a visual acuity of 20/40 results in accurate evaluations that are based solely upon service-connected visual impairment. Our proposal to deem the nonservice-connected eye as having a visual acuity of 20/40 is consistent with current law. We make no change based upon this comment.

This commenter also asserted that VA should consider hearing loss less than total deafness and visual impairment less than blindness when evaluating impairment of the nonservice-connected ear and eye, respectively. The commenter disagreed with VA's Office of the General Counsel opinion VAOPGCPREC 32–97, which interpreted the statutes governing compensation for service-connected disabilities and concluded that where a claimant has service-connected hearing loss in one ear and nonservice-connected hearing loss in the other ear, for purposes of evaluating the service-connected disability, the hearing in the ear with nonservice-connected hearing loss should be considered normal, unless the claimant is totally deaf in both ears. The issue raised by the commenter was mooted by the Veterans Benefits Act of 2002, Public Law 107–330, which authorized VA, when a veteran has compensable service-connected hearing loss in one ear and nonservice-connected deafness in the other ear, to assign an evaluation and pay compensation as though both ears were service-connected, and the Dr. James Allen Veteran Vision Equity Act of 2007, Public Law 110–157, which authorized VA, when a veteran has service-connected visual impairment in one eye and nonservice-connected visual impairment in the other eye of the degree described above, to assign an evaluation and pay compensation as though both eye disabilities were service connected. *See* 38 U.S.C. 1160(a)(1) and (3).

Further, while § 4.78 addressed aggravation, it is unnecessary to include this in this regulation as it is covered in 38 CFR 4.22. Section 4.78's discussion of aggravation was duplicative of § 4.22.

Proposed § 4.75(d) stated that the evaluation for visual impairment of one eye may be combined with evaluations for other disabilities that are not based on visual impairment and included disfigurement as an example. One commenter suggested that we evaluate phthisis bulbi (shrunken eyeball) or other serious cosmetic defect of the eyeball at 40 percent instead of referring the rater to diagnostic code 7800 (''Scars, disfiguring, head, face, or neck'') under the skin portion of the Rating Schedule. The commenter felt this would provide a standard evaluation for this problem.

The portion of the Rating Schedule that addresses the skin has been revised (67 FR 49590, July 31, 2002) since the comment was written. Diagnostic code 7800 is no longer limited to evaluation of scarring of the skin. The revised evaluation criteria include a 30-percent evaluation for gross distortion or asymmetry of a paired set of features with visible or palpable tissue loss. Since by definition, phthisis bulbi is a shrunken or atrophic eyeball, there would be visible or palpable tissue loss, and this level of evaluation under diagnostic code 7800 would apply. Any other cosmetic defect of the eyeball that meets the criteria for disfigurement could also be evaluated under diagnostic code 7800, with the level of evaluation based on application of the criteria for disfigurement. Therefore, we make no change based on this comment.

Proposed § 4.75(e) instructed adjudicators to increase evaluations by 10 percent in situations where a claimant has anatomical loss of one eye with inability to wear a prosthesis. One commenter suggested that 10 percent be added in the absence of anatomical loss but with deformity and inability to wear a prosthesis. The evaluation criteria of diagnostic code 7800 would apply in this situation. The level of evaluation for deformity and inability to wear a prosthesis could be more or less than 10 percent, depending on the extent of disfigurement. However, to avoid pyramiding under 38 CFR 4.14 (''the evaluation of the same manifestation under different diagnoses [is] to be avoided''), an evaluation under diagnostic code 7800 would preclude an additional 10 percent for the same deformity under § 4.75. We have decided to also specify in § 4.75(e) that the 10-percent increase in evaluation under that provision for anatomical loss of one eye with inability to wear a prosthesis precludes an evaluation under diagnostic code 7800 based on gross distortion or asymmetry of the eye.

We made nonsubstantive revisions to proposed § 4.75(b), (c), (d), (e), and (f) to improve clarity.

Section 4.76 Visual Acuity

We proposed to delete § 4.83, which stated that a person not able to read at any one of the scheduled steps or distances, but able to read at the ''next scheduled step or distance,'' is to be rated as reading at this latter step or distance. A commenter noted that this rule is vital for determining whether to select the higher or lower evaluation and recommended that we retain § 4.83. In our view, an adjudicator could simply refer to 38 CFR 4.7 to determine the correct evaluation. However, we will retain this instruction to promote consistency of evaluations. We have included the following language in § 4.76(b) at § 4.76(b)(4): ''To evaluate the impairment of visual acuity where a claimant has a reported visual acuity that is between two sequentially listed visual acuities, use the visual acuity which permits the higher evaluation.''

We proposed that visual acuity would generally be evaluated on the basis of corrected distance vision. One commenter suggested that because VA policy is to rate on central acuity, not eccentric viewing, we should revise the proposed language of § 4.76(b)(1) to clarify that even when a central scotoma is present, central visual acuity is evaluated based upon best corrected distance vision with central fixation. We agree that central visual acuity should be emphasized. To assure consistency of evaluation and eliminate the variability that could result if eccentric vision were tested, we have revised the language of proposed § 4.76(b)(1) according to the commenter's suggestion. For the sake of consistency, we have also added ''central'' to § 4.76(a) before ''*uncorrected* and *corrected* visual acuity''.

Another commenter asked how visual acuity is determined if central fixation is not possible. Visual acuity can be determined in these cases by optometrists and ophthalmologists, because they are routinely trained in special methods and techniques that allow them to assess visual acuity and/or function when there is loss of central fixation. Thus, central visual acuity can still be used to rate visual impairment, even if central fixation is impossible.

In § 4.76(b)(1), we proposed to amend how we evaluate visual acuity where there is a significant difference in the lens required to correct distance vision in the poorer eye compared to the lens required to correct distance vision in the better eye. We proposed to evaluate the visual acuity of the poorer eye using either its uncorrected visual acuity or its visual acuity as corrected by a lens that does not differ by more than three diopters from the lens needed for correction of the other eye, whichever results in better combined visual acuity. This provision reduced the diopter difference required for application of this provision from the current requirement of more than four diopters to a requirement of more than three diopters. We proposed to reduce the diopter difference because at more than three diopters there is a significant possibility that a claimant will have visual difficulties. However, we have learned that even reducing the diopter difference required for application of this provision from more than four diopters to more than three diopters may still not assure that the individual's brain will be able to ''fuse'' the two differently sized images. The inability to do so results in an intolerable optical correction from clinically significant aniseikonia (where the ocular image of an object as seen by one eye differs in size and shape from that seen by the other).

Therefore, we have decided to remove the language ''by a lens that does not differ by more than three diopters from the lens needed for correction of the other eye.'' By permitting evaluation based on either uncorrected vision or corrected vision without specifying the refractive power of the lens, we can accommodate both individuals who do experience visual difficulty when wearing such different lenses and individuals who do not experience visual difficulty.

Further, we have added to § 4.76(b)(1) language stating, ''and either the poorer eye or both eyes are service connected'' to emphasize VA's authority to service connect unilateral visual impairment. This additional language clarifies that VA evaluators must apply this provision whether disability of either only one eye (the poorer eye) or both eyes is service-connected.

We made nonsubstantive revisions to proposed § 4.76(a), (b)(1), (b)(2) and (b)(3) to improve clarity.

Section 4.76a Computation of Average Concentric Contraction of Visual Fields

We proposed to remove § 4.76a because directions for evaluating visual fields were revised and moved to § 4.77. The proposed rule did not make it clear whether or not Table III and Figure 1, which are part of § 4.76a, were to be retained. Table III lists the normal degrees of the visual field at the eight principal meridians and also gives an example of computing concentric contraction of abnormal visual fields. One commenter suggested that we retain the example of computing visual fields because it is useful for understanding the material on average concentric contraction. We agree, and although we have deleted from § 4.76a the text preceding Table III, we have retained Table III (including the example) and Figure 1 in the final rule.

Section 4.77 Visual Fields

Proposed § 4.77(a) stated that to be adequate for VA purposes, examinations of visual fields must be conducted using a Goldmann kinetic perimeter or equivalent kinetic method, using a standard target size and luminance (Goldmann's equivalent (III/4e)). It required that at least 16 meridians 221/2 degrees apart be charted for each eye. Table III listed the normal extent of the visual fields (in degrees) at the 8 principal meridians (45 degrees apart). It also stated that the examination must be supplemented by the use of a tangent screen when the examiner indicates it is necessary.

The preamble to the proposed rule also stated that until there are reliable standards for comparing the results from static and kinetic perimetry, we propose to retain the requirement for the use of Goldmann kinetic perimetry, which is more reliable than the alternatives. One commenter suggested that VA's disability examination worksheet for the eye also specify the use of a Goldmann kinetic perimeter or equivalent kinetic examination method.

After the proposed rule was published, software programs for automated perimetry were developed that completely simulate results from Goldmann perimetry and can be charted on standard Goldmann charts. The Compensation and Pension Service, after consultation with the Veterans Health Administration's Chiefs of Ophthalmology and Optometry, sent a letter (FL06–21) on November 8, 2006, to the Veterans Benefits Administration regional offices stating that Humphrey Model 750, Octopus Model 101, and later versions of these perimetric devices with simulated kinetic Goldmann testing capability are acceptable devices for determining the extent of visual field loss for compensation and pension eye rating examinations.

Therefore, we have changed proposed § 4.77(a) to indicate that examiners must assess visual fields using either Goldmann kinetic perimetry or automated perimetry using Humphrey Model 750, Octopus Model 101, or later versions of these perimetric devices with simulated kinetic Goldmann testing capability. We also clarified the directions about the Goldmann equivalent that must be used for phakic (normal), aphakic, and pseudophakic individuals. The content of the disability examination worksheets is beyond the scope of this rulemaking, and we make no change based on the comment about the worksheet.

We proposed to evaluate visual fields by using a Goldmann kinetic perimeter or equivalent kinetic method, using a standard target size and luminance (Goldmann's equivalent (III/4e)). That Goldmann equivalent is useful for evaluating visual fields except in certain cases where a larger equivalent size is needed. We have therefore clarified the use of Goldmann equivalents in the final rule by revising proposed § 4.77(a) to state that, for phakic (normal) individuals, as well as for pseudophakic or aphakic individuals who are well adapted to intraocular lens implant or contact lens correction, visual field examinations must be conducted using a standard target size and luminance, which is Goldmann's equivalent III/4e. For aphakic individuals not well adapted to contact lens correction or pseudophakic individuals not well adapted to intraocular lens implant, visual field examinations must be conducted using Goldmann's equivalent IV/4e.

Proposed § 4.77(a) stated that ''[a]t least two recordings of visual fields must be made'' for purposes of VA's disability evaluations. We have learned from vision specialists that this is not necessary and is not standard procedure, since the visual field outline is determined by testing multiple objects along each meridian. Therefore, we have removed the language requiring ''two recordings'' as unnecessary. In conjunction with this change, we have also removed the proposed statement that the confirmed visual fields must be made a part of the examination report. Instead, we have stated in § 4.77(a) that in all cases, the results of visual field examinations must be recorded on a standard Goldmann chart. We additionally require that the Goldmann chart be included with the examination report.

Proposed § 4.77(a) also said that the examination must be supplemented by the use of a tangent screen when the examiner indicates it is necessary. We have determined that a 30-degree threshold visual field with the Goldmann III stimulus size could be used in lieu of a tangent screen. This test provides information similar to the tangent screen. For this reason, the final rule provides that adjudicators must consider either of these two tests when additional testing of visual fields becomes necessary, and requires that the examination report include either the tracing of the tangent screen or the tracing of the 30-degree threshold visual field.

We made further nonsubstantive revisions to proposed § 4.77(a), (b), and (c) to improve clarity.

Section 4.78 Muscle Function

In proposed § 4.78(b)(1), we provided guidance concerning the evaluation of diplopia, and proposed that adjudicators assign an evaluation for diplopia for only one eye. Further, we proposed that where a claimant has both diplopia and decreased visual acuity or a visual field defect, the corrected visual acuity for the poorer eye (or the affected eye, if only one eye is service-connected) is deemed to be, depending on the severity of the diplopia, between one and three steps poorer, provided that the adjusted level of corrected visual acuity does not exceed 5/200. Using the adjusted visual acuity for the poorer eye (or the affected eye) and the corrected visual acuity for the better eye, we proposed that the claimant's visual impairment be evaluated under diagnostic codes 6064 through 6066.

Proposed diagnostic code 6064 refers to light perception only (LPO), which exceeds a visual acuity level of 5/200. Hence, an evaluation under diagnostic code 6064 is not permitted under § 4.78(b). Therefore, in § 4.78(b)(1) we have omitted reference to diagnostic code 6064.

We proposed not to retain in § 4.78(b)(1) the rule from former § 4.77 (Examination of muscle function) which stated that ''[d]iplopia which is only occasional or correctable is not considered a disability,'' since it pertains to the issue of service connection rather than evaluation. Section 4.78(b)(1) addresses evaluation of muscle function rather than service connection. One commenter stated that this rule provides useful guidance to adjudicators considering claims for service connection for diplopia. In response to this comment, and because disease of or injury to one or more extraocular eye muscles may cause diplopia which is occasional or correctable, rather than including this language in § 4.78(b)(1), we have added a note under diagnostic code 6090 (diplopia) stating that in accordance with 38 CFR 4.31, diplopia that is occasional or that is correctable with spectacles is evaluated at 0 percent. This would clarify how to evaluate diplopia with these characteristics.

In order to remove any doubt about the difference between § 4.78(b)(2), which explains how to evaluate diplopia that is present in more than one quadrant or range of degrees, and § 4.78(b)(3), which explains how to evaluate diplopia that exists in two separate areas of the same eye, we have changed the language of § 4.78(b)(2) from ''[w]hen diplopia is present in more than one quadrant,'' as proposed, to ''[w]hen diplopia extends beyond more than one quadrant''. This is similar to the language in the current rating schedule and will ensure a clear distinction between these provisions.

We made nonsubstantive revisions to proposed § 4.78 (a) and (b) to improve clarity.

Section 4.79 Schedule of Ratings—Eye

We proposed to evaluate angle-closure glaucoma (diagnostic code 6012), which often presents as a red, painful eye, sometimes accompanied by nausea and vomiting, either on the basis of visual impairment or on the basis of incapacitating episodes, whichever results in a higher evaluation. We proposed to evaluate open-angle glaucoma (diagnostic code 6013), which generally presents as painless, chronic, progressive loss of vision, solely on the basis of visual impairment because open-angle glaucoma is unlikely to result in incapacitating episodes.

One commenter questioned why angle-closure glaucoma based on incapacitating episodes does not include a 10-percent evaluation for incapacitating episodes of at least 1 week, but less than 2 weeks total duration per year, when diagnostic codes 6000 through 6009 provide for such an evaluation. Under the proposed rule, a minimum evaluation of 10 percent would be assigned for angle-closure glaucoma if continuous medication is required. In our view, virtually all claimants with symptomatic angle-closure glaucoma would require continuous medication, which would entitle them to a minimum 10-percent evaluation. Therefore, we did not propose a 10-percent evaluation based on incapacitating episodes. We make no change based upon this comment.

One commenter suggested that we evaluate both angle-closure and open-angle glaucoma on the basis of visual field loss or central visual acuity impairment, whichever results in a higher evaluation. Section 4.75(a) states that the evaluation of visual impairment is based on impairment of visual acuity (excluding developmental errors of refraction), visual field, and muscle function. All three elements of visual impairment may be present in glaucoma, although visual field loss is most common. Not only would the commenter's suggestion limit the rating possibilities to two of the three elements of visual impairment, it also would not allow for evaluation of angle-closure glaucoma based on incapacitating episodes. Section 4.75(b) states that eye examinations must be conducted by a licensed optometrist or ophthalmologist, and such specialists are unlikely to overlook a visual field defect or any other type of visual impairment in an individual with glaucoma. In our judgment, allowing evaluation to be based on any of the three elements of visual impairment or on incapacitating episodes is a fair way to assess glaucoma and to assure that the veteran is evaluated based on the disabling effects that provide the higher benefit. We have therefore not adopted the commenter's suggestion.

We proposed that certain eye disabilities be evaluated either on visual impairment or on incapacitating episodes, whichever results in a higher evaluation. We proposed to define an incapacitating episode as a period of acute symptoms severe enough to require bed rest and treatment by a physician or other healthcare provider.

One commenter suggested that the rating formula based on incapacitating episodes—60 percent if there are incapacitating episodes of at least 6 weeks total duration per year, 40 percent if there are incapacitating episodes of at least 4 weeks, but less than 6 weeks, total duration per year, etc.—is miserly because a veteran will be compensated only for visual impairment or periods of incapacitation, but not both, and with less than bedrest, the veteran receives nothing.

In most eye diseases, visual impairment will be the major problem and therefore the more common basis of evaluation. With modern medical and surgical treatment, few patients require bedrest of any duration for eye disease. However, an evaluation based on incapacitating episodes might be higher in those few cases in which bedrest might be required, e.g., angle-closure glaucoma with severe pain, nausea, and vomiting. If bedrest is not required, evaluation is based on visual impairment. The evaluations based on visual impairment and those based on incapacitating episodes are both meant to account for the average occupational impairment. Providing alternative criteria allows the rater to evaluate using the set of criteria more favorable to the veteran.

The same commenter asked why there is a maximum evaluation of 60 percent for incapacitating episodes.

As stated above, with modern medical and surgical treatment, very few, if any, veterans will experience incapacitating episodes of more than 6 weeks total duration per year due to eye disease. However, for any who do, 38 CFR 4.16(a), which provides for a total evaluation based on individual unemployability, and 38 CFR 3.321(b)(1), which provides for extra-schedular evaluations in cases where an evaluation is inadequate because the condition presents such an unusual disability picture that applying the regular schedular standards would be impractical, provide reasonable alternatives for assigning an evaluation greater than 60 percent. In our judgment, the range of evaluations we have provided based on incapacitating episodes of eye disease will adequately compensate veterans, and a 100-percent evaluation level based on incapacitating episodes is not warranted.

Conditions evaluated on the basis of incapacitating episodes are entitled to a 60-percent evaluation when the claimant has experienced at least 6 weeks of incapacitating episodes over the preceding 12 months. One commenter suggested that, in some cases, an adjudicator would not be able to assign the maximum 60-percent evaluation until after the passage of an entire year, and felt that evaluations based upon incapacitating episodes should be retroactive to the date of the first incapacitating episode, regardless of when it occurred.

By statute (38 U.S.C. 5110(a)), except as otherwise provided, the effective date of an award of compensation will be fixed in accordance with the facts but not before the date of receipt of the claim. Furthermore, an award of increased compensation will be effective the earliest date it is ascertainable that an increase in disability occurred if application is received within 1 year of that date. 38 U.S.C. 5110(b)(2). Otherwise, the effective date is the date the claim was received. 38 CFR 3.400(o)(2). We are aware of no special provisions that would apply to the evaluation of incapacitating episodes of the eye. Under governing law, entitlement to a 60-percent rating would not arise until 6 weeks of incapacitating episodes have taken place, and the effective date could not be established before then. Once the claimant has experienced 6 weeks of incapacitating episodes, the 60-percent evaluation will be assigned, even if the evaluation occurs within several months of the initial incapacitating episode. In cases where it takes the entire 12-month period for a claimant to experience 6 weeks of incapacitating episodes, the 60-percent evaluation will be assigned at that time. However, during the interim, a rating corresponding to the total duration of incapacitating episodes already experienced may be assigned. That is to say, once 1 week of incapacitating episodes is experienced, a 10-percent rating may be assigned; once 2 weeks of incapacitating episodes are experienced, a 20-percent rating may be assigned; etc. We make no change based on this comment.

The proposed criteria based on incapacitating episodes referred to the total duration of incapacitating episodes ''per year''. To clarify that we mean during the preceding 12-month period, and not the calendar year, we have changed this language to refer to incapacitating episodes ''during the past 12 months''. This language is consistent with other provisions in the rating schedule that evaluate incapacitating episodes (e.g., diagnostic code 5243, intervertebral disc syndrome, and diagnostic code 7354, hepatitis C). We are also adding language to indicate that bed rest must be prescribed by a physician to the notes following diagnostic codes 6000 through 6009 and diagnostic code 6012 of the rating schedule. This clarifies VA's intent in the proposed rule and makes a nonsubstantive change for clarification purposes.

One commenter asked for clarification as to whether the absence of light perception is to be evaluated as anatomical loss of one eye (diagnostic code 6063) or light perception only (diagnostic code 6064).

Section 4.75(d) states that the evaluation for visual impairment of one eye must not exceed 30-percent unless there is anatomical loss of the eye. This is clear and straightforward and names no exceptions. Therefore, in evaluating visual acuity of one eye, no light perception is evaluated the same as light perception only. To avoid confusion, we have revised the titles of diagnostic codes 6062 to ''No more than light perception in both eyes'' and 6064 to ''No more than light perception in one eye.''

As previously discussed under one of the comments about diplopia, we have added a note to diagnostic code 6090 stating that occasional or correctable diplopia will be evaluated as 0-percent disabling.

One commenter asked that we clarify whether the use of an eye patch for diplopia warrants special monthly compensation (SMC) (*see* 38 CFR 3.350) for loss or loss of use of an eye. Since the eye is present when an eye patch is used for diplopia, SMC for loss of an eye is not warranted. Visual impairment due to diplopia is determined without the eye patch, and it could be at any level of severity, so SMC for loss of use of an eye is also not warranted. The fact that the eye is not being used when it is patched does not necessarily mean it cannot be used, which would be required for loss of use.

We use the word ''alternatively'' instead of the proposed ''otherwise'' in diagnostic code 6011 for clarity and add ''if this would result in a higher evaluation'' for further guidance. We use similar language in diagnostic code 6081 for the same purpose. We additionally edited the proposed criteria for evaluating malignant neoplasms of the eyeball (diagnostic code 6014) for the sake of clarity.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted as final with the changes noted.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule has been examined, and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles are 64.104, Pension for Non-Service-Connected Disability for Veterans, and 64.109, Veterans Compensation for Service-Connected Disability.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: August 6, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart B—Disability Ratings

■ 2. Section 4.75 is revised to read as follows:

§ 4.75 General considerations for evaluating visual impairment.

(a) *Visual impairment.* The evaluation of visual impairment is based on impairment of visual acuity (excluding developmental errors of refraction), visual field, and muscle function.

(b) *Examination for visual impairment.* The examination must be conducted by a licensed optometrist or by a licensed ophthalmologist. The examiner must identify the disease, injury, or other pathologic process responsible for any visual impairment found. Examinations of visual fields or muscle function will be conducted only when there is a medical indication of disease or injury that may be associated with visual field defect or impaired muscle function. Unless medically contraindicated, the fundus must be examined with the claimant's pupils dilated.

(c) *Service-connected visual impairment of only one eye.* Subject to the provisions of 38 CFR 3.383(a), if visual impairment of only one eye is service-connected, the visual acuity of the other eye will be considered to be 20/40 for purposes of evaluating the service-connected visual impairment.

(d) *Maximum evaluation for visual impairment of one eye.* The evaluation for visual impairment of one eye must not exceed 30 percent unless there is anatomical loss of the eye. Combine the evaluation for visual impairment of one eye with evaluations for other disabilities of the same eye that are not based on visual impairment (e.g., disfigurement under diagnostic code 7800).

(e) *Anatomical loss of one eye with inability to wear a prosthesis.* When the claimant has anatomical loss of one eye and is unable to wear a prosthesis, increase the evaluation for visual acuity under diagnostic code 6063 by 10 percent, but the maximum evaluation for visual impairment of both eyes must not exceed 100 percent. A 10-percent increase under this paragraph precludes an evaluation under diagnostic code 7800 based on gross distortion or asymmetry of the eye but not an evaluation under diagnostic code 7800 based on other characteristics of disfigurement.

(f) *Special monthly compensation.* When evaluating visual impairment, refer to 38 CFR 3.350 to determine whether the claimant may be entitled to special monthly compensation. Footnotes in the schedule indicate levels of visual impairment that potentially establish entitlement to special monthly compensation; however, other levels of visual impairment combined with disabilities of other body systems may also establish entitlement.

(Authority: 38 U.S.C. 1114 and 1155)

■ 3. Section 4.76 is revised to read as follows:

§ 4.76 Visual acuity.

(a) *Examination of visual acuity.* Examination of visual acuity must include the central *uncorrected* and *corrected* visual acuity for *distance* and *near* vision using Snellen's test type or its equivalent.

(b) *Evaluation of visual acuity.* (1) Evaluate central visual acuity on the basis of corrected distance vision with central fixation, even if a central scotoma is present. However, when the lens required to correct distance vision in the poorer eye differs by more than three diopters from the lens required to correct distance vision in the better eye (and the difference is not due to congenital or developmental refractive error), and either the poorer eye or both eyes are service connected, evaluate the visual acuity of the poorer eye using either its uncorrected or corrected visual acuity, whichever results in better combined visual acuity.

(2) Provided that he or she customarily wears contact lenses, evaluate the visual acuity of any individual affected by a corneal disorder that results in severe irregular astigmatism that can be improved more by contact lenses than by eyeglass lenses, as corrected by contact lenses.

(3) In any case where the examiner reports that there is a difference equal to two or more scheduled steps between near and distance corrected vision, with the near vision being worse, the examination report must include at least two recordings of near and distance corrected vision and an explanation of the reason for the difference. In these cases, evaluate based on corrected distance vision adjusted to one step poorer than measured.

(4) To evaluate the impairment of visual acuity where a claimant has a reported visual acuity that is between two sequentially listed visual acuities, use the visual acuity which permits the higher evaluation.

(Authority: 38 U.S.C. 1155)

■ 4. In § 4.76a, remove the introductory text, retain Table III—Normal Visual Field Extent at 8 Principal Meridians, retain Figure 1. Chart of visual field showing normal field right eye and abnormal contraction visual field left eye and the text and table following Figure 1, and add an authority citation at the end of the section to read as follows.

§ 4.76a Computation of average concentric contraction of visual fields.

* * * * *

(Authority: 38 U.S.C. 1155)

■ 5. Section 4.77 is amended by:

■ a. Revising the section heading.

■ b. Removing the introductory text and adding, in its place, paragraphs (a), (b), and (c).

■ c. Retaining Figure 2. Goldmann Perimeter Chart.

■ d. Adding an authority citation at the end of the section.

The additions read as follows:

§ 4.77 Visual fields.

(a) *Examination of visual fields.* Examiners must use either Goldmann kinetic perimetry or automated perimetry using Humphrey Model 750, Octopus Model 101, or later versions of these perimetric devices with simulated kinetic Goldmann testing capability. For phakic (normal) individuals, as well as for pseudophakic or aphakic individuals who are well adapted to intraocular lens implant or contact lens correction, visual field examinations must be conducted using a standard target size and luminance, which is Goldmann's equivalent III/4e. For aphakic individuals not well adapted to contact lens correction or pseudophakic individuals not well adapted to intraocular lens implant, visual field examinations must be conducted using Goldmann's equivalent IV/4e. In all cases, the results must be recorded on a standard Goldmann chart (see Figure 1), and the Goldmann chart must be included with the examination report. The examiner must chart at least 16 meridians 22½ degrees apart for each eye and indicate the Goldmann equivalent used. See Table III for the normal extent (in degrees) of the visual fields at the 8 principal meridians (45 degrees apart). When the examiner indicates that additional testing is necessary to evaluate visual fields, the additional testing must be conducted using either a tangent screen or a 30-degree threshold visual field with the Goldmann III stimulus size. The examination report must then include the tracing of either the tangent screen or of the 30-degree threshold visual field with the Goldmann III stimulus size.

(b) *Evaluation of visual fields.* Determine the average concentric contraction of the visual field of each eye by measuring the remaining visual field (in degrees) at each of eight principal meridians 45 degrees apart, adding them, and dividing the sum by eight.

(c) *Combination of visual field defect and decreased visual acuity.* To determine the evaluation for visual impairment when both decreased visual acuity and visual field defect are present in one or both eyes and are service connected, separately evaluate the visual acuity and visual field defect (expressed as a level of visual acuity), and combine them under the provisions of § 4.25.

* * * * *

(Authority: 38 U.S.C. 1155)

■ 6. Section 4.78 is revised to read as follows:

§ 4.78 Muscle function.

(a) *Examination of muscle function.* The examiner must use a Goldmann perimeter chart that identifies the four major quadrants (upward, downward, left and right lateral) and the central field (20 degrees or less) (see Figure 2). The examiner must chart the areas of diplopia and include the plotted chart with the examination report.

(b) *Evaluation of muscle function.* (1) An evaluation for diplopia will be assigned to only one eye. When a claimant has both diplopia and decreased visual acuity or visual field defect, assign a level of corrected visual acuity for the poorer eye (or the affected eye, if disability of only one eye is service-connected) that is: one step poorer than it would otherwise warrant if the evaluation for diplopia under diagnostic code 6090 is 20/70 or 20/100; two steps poorer if the evaluation under diagnostic code 6090 is 20/200 or 15/200; or three steps poorer if the evaluation under diagnostic code 6090 is 5/200. This adjusted level of corrected visual acuity, however, must not exceed a level of 5/200. Use the adjusted visual acuity for the poorer eye (or the affected eye, if disability of only one eye is service-connected), and the corrected visual acuity for the better eye (or visual acuity of 20/40 for the other eye, if only one eye is service-connected) to determine the percentage evaluation for visual impairment under diagnostic codes 6065 through 6066.

(2) When diplopia extends beyond more than one quadrant or range of degrees, evaluate diplopia based on the quadrant and degree range that provides the highest evaluation.

(3) When diplopia exists in two separate areas of the same eye, increase the equivalent visual acuity under diagnostic code 6090 to the next poorer level of visual acuity, not to exceed 5/200.

(Authority: 38 U.S.C. 1155)

■ 7. Section 4.79 is revised to read as follows:

§ 4.79 Schedule of ratings—eye.

DISEASES OF THE EYE

	Rating
6000 Choroidopathy, including uveitis, iritis, cyclitis, and choroiditis.	
6001 Keratopathy.	
6002 Scleritis.	
6006 Retinopathy or maculopathy.	
6007 Intraocular hemorrhage.	
6008 Detachment of retina.	
6009 Unhealed eye injury.	
General Rating Formula for Diagnostic Codes 6000 through 6009	
Evaluate on the basis of either visual impairment due to the particular condition or on incapacitating episodes, whichever results in a higher evaluation.	
With incapacitating episodes having a total duration of at least 6 weeks during the past 12 months	60
With incapacitating episodes having a total duration of at least 4 weeks, but less than 6 weeks, during the past 12 months	40
With incapacitating episodes having a total duration of at least 2 weeks, but less than 4 weeks, during the past 12 months	20
With incapacitating episodes having a total duration of at least 1 week, but less than 2 weeks, during the past 12 months	10
Note: For VA purposes, an incapacitating episode is a period of acute symptoms severe enough to require prescribed bed rest and treatment by a physician or other healthcare provider.	
6010 Tuberculosis of eye:	
Active	100
Inactive: Evaluate under § 4.88c or § 4.89 of this part, whichever is appropriate.	
6011 Retinal scars, atrophy, or irregularities:	
Localized scars, atrophy, or irregularities of the retina, unilateral or bilateral, that are centrally located and that result in an irregular, duplicated, enlarged, or diminished image	10
Alternatively, evaluate based on visual impairment due to retinal scars, atrophy, or irregularities, if this would result in a higher evaluation.	
6012 Angle-closure glaucoma:	
Evaluate on the basis of either visual impairment due to angle-closure glaucoma or incapacitating episodes, whichever results in a higher evaluation.	
With incapacitating episodes having a total duration of at least 6 weeks during the past 12 months	60

DISEASES OF THE EYE—Continued

	Rating
With incapacitating episodes having a total duration of at least 4 weeks, but less than 6 weeks, during the past 12 months	40
With incapacitating episodes having a total duration of at least 2 weeks, but less than 4 weeks, during the past 12 months	20
Minimum evaluation if continuous medication is required	10
Note: For VA purposes, an incapacitating episode is a period of acute symptoms severe enough to require prescribed bed rest and treatment by a physician or other healthcare provider.	
6013 Open-angle glaucoma:	
Evaluate based on visual impairment due to open-angle glaucoma.	
Minimum evaluation if continuous medication is required	10
6014 Malignant neoplasms (eyeball only):	
Malignant neoplasm of the eyeball that requires therapy that is comparable to that used for systemic malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the area of the eye, or surgery more extensive than enucleation	100
Note: Continue the 100-percent rating beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating will be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination will be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, evaluate based on residuals.	
Malignant neoplasm of the eyeball that does not require therapy comparable to that for systemic malignancies:	
Separately evaluate visual impairment and nonvisual impairment, e.g., disfigurement (diagnostic code 7800), and combine the evaluations.	
6015 Benign neoplasms (of eyeball and adnexa):	
Separately evaluate visual impairment and nonvisual impairment, e.g., disfigurement (diagnostic code 7800), and combine the evaluations.	
6016 Nystagmus, central	10
6017 Trachomatous conjunctivitis:	
Active: Evaluate based on visual impairment, minimum	30
Inactive: Evaluate based on residuals, such as visual impairment and disfigurement (diagnostic code 7800).	
6018 Chronic conjunctivitis (nontrachomatous):	
Active (with objective findings, such as red, thick conjunctivae, mucous secretion, etc.)	10
Inactive: Evaluate based on residuals, such as visual impairment and disfigurement (diagnostic code 7800).	
6019 Ptosis, unilateral or bilateral:	
Evaluate based on visual impairment or, in the absence of visual impairment, on disfigurement (diagnostic code 7800).	
6020 Ectropion:	
Bilateral	20
Unilateral	10
6021 Entropion:	
Bilateral	20
Unilateral	10
6022 Lagophthalmos:	
Bilateral	20
Unilateral	10
6023 Loss of eyebrows, complete, unilateral or bilateral	10
6024 Loss of eyelashes, complete, unilateral or bilateral	10
6025 Disorders of the lacrimal apparatus (epiphora, dacryocystitis, etc.):	
Bilateral	20
Unilateral	10
6026 Optic neuropathy:	
Evaluate based on visual impairment.	
6027 Cataract of any type:	
Preoperative:	
Evaluate based on visual impairment.	
Postoperative:	
If a replacement lens is present (pseudophakia), evaluate based on visual impairment. If there is no replacement lens, evaluate based on aphakia.	
6029 Aphakia or dislocation of crystalline lens:	
Evaluate based on visual impairment, and elevate the resulting level of visual impairment one step.	
Minimum (unilateral or bilateral)	30
6030 Paralysis of accommodation (due to neuropathy of the Oculomotor Nerve (cranial nerve III)).	20
6032 Loss of eyelids, partial or complete:	
Separately evaluate both visual impairment due to eyelid loss and nonvisual impairment, e.g., disfigurement (diagnostic code 7800), and combine the evaluations.	
6034 Pterygium:	
Evaluate based on visual impairment, disfigurement (diagnostic code 7800), conjunctivitis (diagnostic code 6018), etc., depending on the particular findings.	
6035 Keratoconus:	
Evaluate based on impairment of visual acuity.	
6036 Status post corneal transplant:	
Evaluate based on visual impairment.	
Minimum, if there is pain, photophobia, and glare sensitivity	10
6037 Pinguecula:	
Evaluate based on disfigurement (diagnostic code 7800).	

DISEASES OF THE EYE—Continued

	Rating
Impairment of Central Visual Acuity	
6061 Anatomical loss of both eyes [1]	100
6062 No more than light perception in both eyes [1]	100
6063 Anatomical loss of one eye: [1]	
In the other eye 5/200 (1.5/60)	100
In the other eye 10/200 (3/60)	90
In the other eye 15/200 (4.5/60)	80
In the other eye 20/200 (6/60)	70
In the other eye 20/100 (6/30)	60
In the other eye 20/70 (6/21)	60
In the other eye 20/50 (6/15)	50
In the other eye 20/40 (6/12)	40
6064 No more than light perception in one eye: [1]	
In the other eye 5/200 (1.5/60)	100
In the other eye 10/200 (3/60)	90
In the other eye 15/200 (4.5/60)	80
In the other eye 20/200 (6/60)	70
In the other eye 20/100 (6/30)	60
In the other eye 20/70 (6/21)	50
In the other eye 20/50 (6/15)	40
In the other eye 20/40 (6/12)	30
6065 Vision in one eye 5/200 (1.5/60):	
In the other eye 5/200 (1.5/60)	[1]100
In the other eye 10/200 (3/60)	90
In the other eye 15/200 (4.5/60)	80
In the other eye 20/200 (6/60)	70
In the other eye 20/100 (6/30)	60
In the other eye 20/70 (6/21)	50
In the other eye 20/50 (6/15)	40
In the other eye 20/40 (6/12)	30
6066 Visual acuity in one eye 10/200 (3/60) or better:	
Vision in one eye 10/200 (3/60):	
In the other eye 10/200 (3/60)	90
In the other eye 15/200 (4.5/60)	80
In the other eye 20/200 (6/60)	70
In the other eye 20/100 (6/30)	60
In the other eye 20/70 (6/21)	50
In the other eye 20/50 (6/15)	40
In the other eye 20/40 (6/12)	30
Vision in one eye 15/200 (4.5/60):	
In the other eye 15/200 (4.5/60)	80
In the other eye 20/200 (6/60)	70
In the other eye 20/100 (6/30)	60
In the other eye 20/70 (6/21)	40
In the other eye 20/50 (6/15)	30
In the other eye 20/40 (6/12)	20
Vision in one eye 20/200 (6/60):	
In the other eye 20/200 (6/60)	70
In the other eye 20/100 (6/30)	60
In the other eye 20/70 (6/21)	40
In the other eye 20/50 (6/15)	30
In the other eye 20/40 (6/12)	20
Vision in one eye 20/100 (6/30):	
In the other eye 20/100 (6/30)	50
In the other eye 20/70 (6/21)	30
In the other eye 20/50 (6/15)	20
In the other eye 20/40 (6/12)	10
Vision in one eye 20/70 (6/21):	
In the other eye 20/70 (6/21)	30
In the other eye 20/50 (6/15)	20
In the other eye 20/40 (6/12)	10
Vision in one eye 20/50 (6/15):	
In the other eye 20/50 (6/15)	10
In the other eye 20/40 (6/12)	10
Vision in one eye 20/40 (6/12):	
In the other eye 20/40 (6/12)	0

[1] Review for entitlement to special monthly compensation under 38 CFR 3.350.

RATINGS FOR IMPAIRMENT OF VISUAL FIELDS

	Rating
6080 Visual field defects:	
Homonymous hemianopsia	30
Loss of temporal half of visual field:	
Bilateral	30
Unilateral	10
Or evaluate each affected eye as 20/70 (6/21).	
Loss of nasal half of visual field:	
Bilateral	10
Unilateral	10
Or evaluate each affected eye as 20/50 (6/15).	
Loss of inferior half of visual field:	
Bilateral	30
Unilateral	10
Or evaluate each affected eye as 20/70 (6/21).	
Loss of superior half of visual field:	
Bilateral	10
Unilateral	10
Or evaluate each affected eye as 20/50 (6/15).	
Concentric contraction of visual field:	
With remaining field of 5 degrees: [1]	
Bilateral	100
Unilateral	30
Or evaluate each affected eye as 5/200 (1.5/60).	
With remaining field of 6 to 15 degrees:	
Bilateral	70
Unilateral	20
Or evaluate each affected eye as 20/200 (6/60).	
With remaining field of 16 to 30 degrees:	
Bilateral	50
Unilateral	10
Or evaluate each affected eye as 20/100 (6/30).	
With remaining field of 31 to 45 degrees:	
Bilateral	30
Unilateral	10
Or evaluate each affected eye as 20/70 (6/21).	
With remaining field of 46 to 60 degrees:	
Bilateral	10
Unilateral	10
Or evaluate each affected eye as 20/50 (6/15).	
6081 Scotoma, unilateral:	
Minimum, with scotoma affecting at least one-quarter of the visual field (quadrantanopsia) or with centrally located scotoma of any size	10
Alternatively, evaluate based on visual impairment due to scotoma, if that would result in a higher evaluation.	

[1] Review for entitlement to special monthly compensation under 38 CFR 3.350.

RATINGS FOR IMPAIRMENT OF MUSCLE FUNCTION

Degree of diplopia	Equivalent visual acuity
6090 Diplopia (double vision):	
(a) Central 20 degrees	5/200 (1.5/60)
(b) 21 degrees to 30 degrees	
(1) Down	15/200 (4.5/60)
(2) Lateral	20/100 (6/30)
(3) Up	20/70 (6/21)
(c) 31 degrees to 40 degrees	
(1) Down	20/200 (6/60)
(2) Lateral	20/70 (6/21)
(3) Up	20/40 (6/12)
Note: In accordance with 38 CFR 4.31, diplopia that is occasional or that is correctable with spectacles is evaluated at 0 percent.	
6091 Symblepharon:	
Evaluate based on visual impairment, lagophthalmos (diagnostic code 6022), disfigurement (diagnostic code 7800), etc., depending on the particular findings.	

(Authority: 38 U.S.C. 1155)

§§ 4.80, 4.83, and 4.84 [Removed and Reserved]

■ 8. Sections 4.80, 4.83, and 4.84 are removed and reserved.

§§ 4.83a and 4.84a [Removed]

■ 9. Sections 4.83a and 4.84a are removed.

[FR Doc. E8–26304 Filed 11–7–08; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0068; FRL–8738–3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Control of Stationary Combustion Turbine Electric Generating Unit Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision pertains to controlling nitrogen oxides (NO_X) emissions from stationary combustion turbine (CT) electric generating units (EGUs). EPA is approving this SIP revision in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on December 10, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0068. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Gerallyn Duke (215) 814–2084, or by e-mail at *duke.gerallyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 14, 2008 (73 FR 40228), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of the Regulation 1148—Control of Stationary Combustion Turbine Electric Generating Unit Emissions. The formal SIP revision was submitted by the State of Delaware on September 11, 2007.

II. Summary of SIP Revision

Regulation 1148 requires that an owner or operator of an existing stationary combustion turbine electric generating unit located in Delaware with a base-load nameplate capacity of 1 megawatt (MW) or greater must, by May 1, 2009, either demonstrate that the existing stationary combustion turbine generating unit meets the emission limits listed below or must install NO_X emission controls designed to meet these limits:

- For CTs that burn gaseous fuel—42 parts per million volume (ppmv) NO_X.
- For CTs that burn liquid fuel—88 ppmv NO_X.

Design of these limits was based on anticipated NO_X emissions if water injection pollution control equipment were installed. The six CTs affected by this regulation operate without any NO_X pollution control equipment, although they are subject to regulations designed to control NO_X emissions. Delaware determined that the six sources could achieve significant reductions in their NO_X emissions through the use of water injection equipment. EPA has previously recognized this equipment and technology as reasonably available control technology (RACT). Water injection is a proven, feasible technology that has been used in other states to reduce NO_X emissions.

This revision will reduce NO_X emissions from CTs by 40 percent, or by 0.88 tons per day to approximately 1.33 tons per day. Such a reduction will significantly improve air quality, particularly on days when CTs normally operate, i.e., hot humid days and when weather conditions are conducive to forming ground-level ozone, and is one of the many regulatory steps taken to allow Delaware to attain the National Ambient Air Quality Standards (NAAQS) by 2010.

Other specific requirements of Regulation 1148 and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is approving Regulation 1148—Control of NO_X Emissions from Stationary Combustion Turbine Electric Generating Units as a revision to the Delaware SIP.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as

appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et. seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 9, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to control NO_X emissions from stationary combustion turbine electric generating units in Delaware may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: October 28, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by adding entries for Regulation 1148—Control of Stationary Combustion Turbine Electric Generating Unit Emissions at the end of the table to read as follows:

52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Regulation No. 1148	Control of Stationary Combustion Turbine Electric Generating Unit Emissions			
Section 1.0	Purpose	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.
Section 2.0	Applicability	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.
Section 3.0	Definitions	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.
Section 4.0	NO_X Emissions Limitations.	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.
Section 5.0	Monitoring and Reporting.	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.
Section 6.0	Recordkeeping	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.
Section 7.0	Penalties	7/11/07	11/10/08 [Insert page number where the document begins].	New Section.

* * * * *

[FR Doc. E8–26398 Filed 11–7–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–IL–0003; FRL–8730–4]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; CILCO (AmerenEnergy) Edwards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is responding to comments and taking final action on a July 29, 2003, site-specific sulfur dioxide (SO_2) State Implementation Plan revision request for the Central Illinois Light Company E.D. Edwards Generating Station, now known as AmerenEnergy Resources Generating Company, Edwards Power Plant, in Peoria County, Illinois. This request amends the facility's emission limits to allow a higher SO_2 emission limit for one of its boilers. To offset this increase, the revised rule includes a group limit for the facility's three boilers which is

lower than the individual boiler emission limits. The revised rule retains the facility's existing cap on total SO_2 emissions. Illinois' July 29, 2003, submittal was identical to a State variance which EPA had approved as a temporary revision on April 13, 2000. On November 12, 2004, EPA approved the July 29, 2003, permanent rule revision submittal as a direct final action. However, on December 13, 2004, EPA received an adverse comment on its approval. EPA withdrew the direct final approval on January 11, 2005. As stated in the January 11, 2005, withdrawal, EPA is not establishing a second comment period on this action.

DATES: This final rule is effective on December 10, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2004–IL–0003. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Mary Portanova, Environmental Engineer, at (312) 353–5954 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT:
Mary Portanova, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:
Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

On July 29, 2003, Illinois submitted a site-specific SO_2 State Implementation Plan (SIP) revision request for the Central Illinois Light Company, in Bartonville, Peoria County, Illinois (CILCO Edwards). The facility is now known as AmerenEnergy Resources Generating Company, Edwards Power Plant. The SIP revision request, which amended CILCO (AmerenEnergy) Edwards' SO_2 emission limits, was identical to an earlier temporary SIP revision, which EPA approved on April 13, 2000 (65 FR 19838). Therefore, on November 12, 2004 (69 FR 65378), EPA approved the July 29, 2003, permanent SIP revision request as a direct final action. However, on December 13, 2004, EPA received adverse comments on the action. EPA withdrew the direct final approval on January 11, 2005 (70 FR 1824). The adverse comments and EPA's responses are given in section III below.

II. What has changed in the Illinois SO_2 SIP?

CILCO (AmerenEnergy) Edwards operates three boilers, numbered 1, 2, and 3. Its SO_2 emission limits are codified at 35 Illinois Administrative Code (IAC) 214.561. Previously, the Illinois SO_2 SIP limited the emissions from Boilers 1 and 3 to 6.6 pounds of SO_2 per million British Thermal Units (lb/MMBtu) and Boiler 2's emissions to 1.8 lb/MMBtu (See 35 IAC 214.141). The July 29, 2003, SIP revision request incorporated rule changes which were identical to the limits in the variance submitted on May 21, 1999, and approved by EPA on April 13, 2000. The average SO_2 emissions from Boilers 1, 2, and 3, as a group, may not exceed 4.71 lb/MMBtu actual heat input. The average SO_2 emissions from any one boiler may not exceed 6.6 lb/MMBtu actual heat input. CILCO (AmerenEnergy) Edwards must determine compliance with these limits on a daily basis using the SO_2 methodology of the Phase II Acid Rain program set forth in 40 CFR part 75. A plantwide SO_2 emission limit for CILCO (AmerenEnergy) Edwards restricts Boilers 1, 2, and 3, as a group, to 34,613 pounds SO_2 per hour (lb/hr) on a 24-hour average. Compliance with the plantwide limit must also be determined on a daily basis using the Phase II Acid Rain methodology.

III. What comments did EPA receive, and how does EPA respond?

EPA received one set of comments from Heart of Illinois Sierra Club, dated December 13, 2004, which disagreed with EPA's direct final action.

Comment: The commenter cited that in 2004, the Environmental Integrity Project ranked CILCO (AmerenEnergy) Edwards 47th in the United States for SO_2 emissions. The commenter also stated that the CILCO (AmerenEnergy) Edwards facility "emits approximately 13% of the state's SO_2 emissions and lacks even rudimentary pollution controls. The proposed emission rate of 4.71 lb/MMBtu reflects the facility's refusal to install pollution controls and is at least 4 times higher than the limits proposed for new coal-fired power plants."

Response: EPA notes that the Environmental Integrity Project's report from May 2004 does rank CILCO (AmerenEnergy) Edwards as 47th in the nation by total tons per year of SO_2. The report also shows that the twelve power plants with the highest SO_2 emissions in the United States emitted more than twice CILCO (AmerenEnergy) Edwards' SO_2 emissions, in tons per year. Illinois' Annual Air Quality Report for 2003 (IEPA/BOA/04–019, August 2004) indicated that the State's total point source SO_2 emissions for 2003 were 512,320.6 tons per year (tpy), and the total SO_2 emissions from external fuel combustion electric generation sources were 348,602.0 tpy (Table C4). Total fuel combustion SO_2 emissions were estimated in the report as 414,050.0 tpy (Table 8). CILCO (AmerenEnergy) Edwards' 55,035 tpy SO_2 for 2003 would be 10.7%, 15.8%, and 13.3% of these totals, respectively. EPA agrees that CILCO (AmerenEnergy) Edwards is a large facility with significant SO_2 emissions. Its boilers have control systems for nitrogen oxides and particulate matter, but not for SO_2. As part of the variance in 1999, the Illinois Pollution Control Board required CILCO (AmerenEnergy) Edwards to research and report on techniques to control its SO_2 emissions. CILCO (AmerenEnergy) Edwards reported that installing flue gas desulfurization systems to control SO_2 would be both economically and technically infeasible. The CILCO (AmerenEnergy) Edwards facility does not have the necessary space available to install them.

The States prepare SIPs in order to maintain the ambient air quality standards, pursuant to section 110 of the Clean Air Act (CAA). In its review of State SO_2 SIPs and SIP revision requests, EPA generally does not prescribe specific control measures, nor does it comment on the size of individual facilities. Rather, EPA requires that the emission limits be clear, enforceable, and protective of the National Ambient Air Quality Standards (NAAQS) for SO_2. The level of emissions allowed for new coal-fired plants in Illinois is not necessarily relevant to the emission limits of existing sources. Newer facilities may be expected to be more efficient or better suited for current control technology. Illinois may determine how best to manage its emission regulations, as long as the NAAQS continue to be maintained. In support of the 1999 variance, Illinois submitted air quality modeling results which evaluated the highest ground-level SO_2 concentrations possible with CILCO (AmerenEnergy) Edwards operating in compliance with the 1999 variance limits. This modeling, which included the SO_2 emissions from other nearby sources and a background SO_2 concentration value, showed that CILCO (AmerenEnergy) Edwards did not cause or contribute to a violation of the SO_2 NAAQS. EPA believes that the State has demonstrated that the CILCO (AmerenEnergy) Edwards rule revision will maintain the NAAQS.

Comment: The public was led to believe that the variance approved in 2000 would be a temporary measure.

Response: The 2000 action did in fact address a temporary measure. The Illinois Pollution Control Board (IPCB) anticipated that the company might ask for a permanent revision to its emission limits. The variance required CILCO (AmerenEnergy) Edwards to research and consider alternatives for complying with Phase II of the Acid Rain Program, report back to the IPCB, and if necessary, apply by February 28, 2002, for permanent SO_2 emission limit changes. The April 13, 2000, **Federal Register** made note of this provision at 65 FR 19839. It was not possible to inform the public of CILCO (AmerenEnergy) Edwards' intentions, since they were unknown to EPA at the time. CILCO (AmerenEnergy) Edwards might have reverted to its former limits, applied for the 1999 variance to be made permanent in 2002, or applied at any time for a different rule revision altogether.

Comment: The timetable for review and available information is inadequate. The commenter requested additional time for review and also requested that EPA provide a public hearing to discuss the SIP revision prior to acting on it.

Response: Upon receipt of the adverse comments, EPA withdrew the direct final action. The comment period was not extended. Thirty days is the usual comment period for a SIP action. The November 12, 2004, action was expected to be noncontroversial because it addressed a SIP revision which was identical to the SIP rule variance which EPA approved on April 13, 2000. There was a thirty day comment period for the April 13, 2000, action as well, and no comments were received at the time.

In accordance with SIP procedures, the State of Illinois provided an opportunity for a public hearing on this proposed action prior to its adoption by the Illinois Pollution Control Board. The Notice of Hearing for this petition was filed on August 21, 2002, and the public hearing was held on October 11, 2002. Representatives from the Illinois Environmental Protection Agency and CILCO (AmerenEnergy) Edwards gave statements. No members of the public attended the hearing.

Comment: EPA must complete the New Source Review investigation prior to approving this SIP revision. EPA should not approve a variance for a coal-fired power plant to skirt existing SO_2 limits for a facility that is under active investigation for a new source review violation.

Response: Ongoing New Source Review investigations are not pertinent to the SIP approval process. It is not possible to anticipate the final outcome of these investigations. Any effect on allowable emissions or SIP rules will occur on a separate schedule. The courts did not place restrictions on the facilities under investigation that would have precluded SIP rulemaking actions; nor did the fact of such an investigation occurring within EPA place such restrictions. Since CILCO (AmerenEnergy) Edwards' proposed new limits were properly adopted by the State and were shown through air quality modeling to protect the SO_2 NAAQS, they are Federally approvable.

Comment: The modeling fails to include new sources which have been built, permitted, or have applied for permits since 1999. The comment named Indeck-Elwood, Peabody's Prairie State Generating Station, Enviropower Franklin County Proposal, CornBelt Energy, the Dynegy Baldwin expansion, Franklin Power, the Marion IGCC proposal, a new coal plant in Springfield, Illinois, the Holcim Cement Plant in Missouri, and the proposed Peabody Thoroughbred power plant in Kentucky as other large SO_2 sources that were not included in the CILCO (AmerenEnergy) Edwards modeling.

Response: Illinois' SIP emission inventory does not include sources which are not yet operating. Several of the commenter's named sources were not operating in 1998, when the CILCO (AmerenEnergy) Edwards modeling was completed, and some have not begun operating to date. As part of the Prevention of Significant Deterioration (PSD) permitting process, new sources address the maintenance of the NAAQS with dispersion modeling that includes neighboring sources. Such modeling would address the combined impact of the new source and existing nearby sources.

Illinois' emission inventory for the CILCO (AmerenEnergy) Edwards rule included large SO_2 sources within 50 kilometers (km) of CILCO (AmerenEnergy) Edwards. The Industrial Source Complex Short Term model (ISCST3), EPA's recommended regulatory dispersion model in 1998, is not considered appropriate for use beyond a 50 km distance. All of the facilities named by the commenter are beyond 100 km from CILCO (AmerenEnergy) Edwards. A background SO_2 concentration, determined by actual monitored air quality data, was added to the modeled concentrations in a NAAQS analysis to represent the impacts of sources too distant to explicitly include in the modeling study.

Comment: CILCO (AmerenEnergy) Edwards must conduct SO_2 modeling that considers whether there are 24-hour or other SO_2 NAAQS violations, and whether there is any impact of CILCO (AmerenEnergy) Edwards on the Mingo National Wildlife Refuge or any other Class I area.

Response: CILCO (AmerenEnergy) Edwards conducted air quality modeling to address the impacts of the variance in 1998. The 1998 modeling addressed all three averaging times for the SO_2 NAAQS (3 hour, 24 hour, and annual). No violations were found. The Mingo National Wildlife Refuge and the next nearest Class I area, Mammoth Cave National Park, are both over 300 km from CILCO (AmerenEnergy) Edwards. As stated before, the ISCST3 model is not considered appropriate for such distances. CILCO (AmerenEnergy) Edwards' SIP revision request was submitted in 2002, and at that time, EPA did not require Class I area analyses when the source was more than 100 km from a Class I area. Some current models can evaluate long-range transport beyond 100 km, but CILCO (AmerenEnergy) Edwards' distance from Class I areas and the emission change represented by the 1999 variance do not indicate a need for additional long-range transport modeling.

Comment: EPA must consider CILCO (AmerenEnergy) Edwards' impact on $PM_{2.5}$ and 8-hour ozone NAAQS.

Response: The SO_2 SIP revision for CILCO (AmerenEnergy) Edwards retains the facility's 34,613 lb/hr overall SO_2 emissions cap and does not provide for an increase in $PM_{2.5}$ precursor emissions. The SIP revision does not provide for increases in ozone precursors. The States are required to submit attainment plans for areas designated nonattainment for particulate matter less than 2.5 microns in diameter ($PM_{2.5}$) and ozone on an 8-hour average. These plans are being prepared separately under statutory schedules. Where appropriate, CILCO (AmerenEnergy) Edwards' emissions will be included in the analyses and control strategies. These ongoing actions do not affect the ability of CILCO (AmerenEnergy) Edwards to demonstrate that its SO_2 limits address the NAAQS for SO_2. If further revisions to CILCO (AmerenEnergy) Edwards' SO_2 limits are necessary as part of the $PM_{2.5}$ or ozone SIPs, Illinois must submit such revisions for Federal approval as they are developed.

Comment: EPA has not complied with the Endangered Species Act (ESA). Federal agencies are required to review their actions ''to insure that any action authorized, funded, or carried out by such agency * * * is not likely to jeopardize the continued existence of any endangered species * * * .'' See Sec. 7(a)(2) of the Endangered Species Act.

Response: EPA disagrees with the commenter. Under relevant CAA provisions, States are entitled to administer their own plans for the implementation, maintenance, and enforcement of the national primary and secondary ambient air quality standards. 42 U.S.C. 7410. EPA is required to approve a State's revision to its SIP that meets all applicable CAA requirements. 42 U.S.C. 7410(k)(3). Illinois' proposed SIP revision for CILCO (AmerenEnergy) Edwards satisfies the conditions of section 110(l) of the CAA, the applicable CAA requirement. Accordingly, and as confirmed by recent Supreme Court precedent, the ESA requirements cited in the comments do not apply to EPA's decision to approve Illinois' SIP revision for CILCO (AmerenEnergy) Edwards. See 50 CFR 402.03; *National Ass'n of Home Builders* v. *Defenders of Wildlife,* 127 S. Ct. 2518 (2007) (*Defenders of Wildlife*).

Section 7(a)(2) of the ESA generally requires Federal agencies to consult with the relevant Federal wildlife agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of Federally-listed endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat of such species. 16 U.S.C. 1536(a)(2). In accordance with relevant ESA implementing regulations, this requirement applies only to actions in which there is discretionary Federal involvement or control. 50 CFR 402.03. In *National Ass'n of Home Builders* v. *Defenders of Wildlife,* 127 S. Ct. 2518 (2007) (*Defenders of Wildlife*), the Supreme Court examined these provisions in the context of EPA's decision to approve a State permitting program under the Clean Water Act (CWA). In that case, the Court held that when a Federal agency is required by statute to undertake a particular action once certain specified triggering events have occurred, there is no relevant agency discretion, and thus the requirements of ESA section 7(a)(2) do not apply. 127 S. Ct. at 2536.

With regard to EPA's transfer of CWA permitting authority to a State, the Court found that the relevant CWA provision mandated that EPA ''shall approve'' a State permitting program if a list of CWA statutory criteria are met. Therefore, EPA lacked the discretion to deny a transfer application that satisfied those criteria. *Id.* at 2531–32. The Court also found that the relevant CWA program approval criteria did not include consideration of endangered or threatened species, and stated that ''[n]othing in the text of [the relevant CWA provision] authorizes EPA to consider the protection of threatened or endangered species as an end in itself when evaluating [an] application'' to transfer a permitting program to a State. *Id.* at 2537. Accordingly, the Court held that the CWA required EPA to approve the State's permitting program if the statutory criteria were met; those criteria did not include the consideration of ESA-protected species; and thus, consistent with 50 CFR 402.03, the non-discretionary action to transfer CWA permitting authority to the State did not trigger relevant ESA section 7 requirements.

Similar to the CWA program approval provision at issue in *Defenders of Wildlife,* section 110(k)(3) of the CAA mandates that EPA ''shall approve'' a SIP submittal that meets applicable CAA requirements. 42 U.S.C. 7410(k)(3). With respect to SIP revisions such as Illinois' requested revision, section 110(l) of the CAA provides the relevant applicable CAA requirements and prohibits the Administrator from approving a SIP revision that ''would interfere with any applicable requirement concerning attainment and reasonable further progress * * *, or any other applicable requirement'' of the CAA. 42 U.S.C. 7410(l).

As was the case with the CWA requirements in *Defenders of Wildlife,* the SIP requirements contained in section 110 of the CAA do not include protection of listed species, and section 110(l) of the CAA does not state that consideration of impacts on listed species is a factor to consider in approving SIP revisions. EPA's action on State SIP submittals is governed by section 110 of the CAA, which unequivocally directs EPA to approve State plans meeting applicable CAA requirements.

EPA recognizes that it exercises some judgment when evaluating whether a SIP submittal meets specific statutory criteria. However, as the Supreme Court held in *Defenders of Wildlife,* the use of such judgment does not allow the Agency ''the discretion to add another entirely separate prerequisite''—such as the ESA section 7(a)(2) consultation requirements—to the list of required criteria EPA considers when determining whether it ''shall approve'' a SIP revision request. 127 S. Ct. at 2537.

Applying the reasoning of *Defenders of Wildlife,* the SIP approval criteria contained in the CAA do not provide EPA with the discretionary authority to consider whether approval of SIP revisions may affect any listed species. EPA has determined that Illinois has submitted a SIP revision request for CILCO (AmerenEnergy) Edwards that satisfies all of the applicable SIP requirements contained in section 110 of the CAA.[1] Thus, given the Supreme Court precedent and applicable regulations—see 50 CFR 402.03—EPA is without discretion to disapprove or condition the State's SIP revision request based on considerations regarding listed species, and the ESA requirements cited by the commenter are thus inapplicable to this approval action.

Comment: Approving a permanent variance appears to be illegal backsliding under CAA section 110, because the proposed rule would relax the clean air safeguards contained in the existing SIP.

Response: EPA disagrees. This SIP revision has been shown to maintain the SO_2 NAAQS under worst-case operating conditions. Therefore, it does not violate 110(l). Sections 110(l) and 110(n)(1) allow States to revise their SIPs and submit them to the EPA for review and approval.

IV. What Action Is EPA Taking?

EPA is approving a July 29, 2003, site-specific request to revise Illinois' SO_2

[1] On the basis of modeling demonstrating a worst-case allowable emissions scenario under the requested revision, EPA has determined that the CILCO (AmerenEnergy) Edwards SIP revision will not interfere with any applicable requirement concerning attainment and reasonable further progress. Nor will it cause or contribute to exceedances of the National Ambient Air Quality Standards in other States. Therefore, the revision has met all applicable requirements under the CAA.

SIP for the Central Illinois Light Company E.D. Edwards Generating Station, now known as AmerenEnergy Resources Generating Company, Edwards Power Plant, in Bartonville, Peoria County, Illinois. The requested revision changes the SO_2 emission limits for the plant's three boilers.

V. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 9, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 2, 2008.

Lynn Buhl,

Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding paragraph (c)(171) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(171) On July 29, 2003, the Illinois Environmental Protection Agency submitted a site-specific revision to the State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the Central Illinois Light Company's E.D. Edwards Generating Station, now known as AmerenEnergy Resources Generating Company, Edwards Power Plant, in Bartonville, Peoria County, Illinois.

(i) Incorporation by reference.

Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 214: Sulfur Limitations, Subpart X: Utilities Section 214.561 E.D. Edwards Electric Generating Station which was amended at 27 *Illinois Register* 12101, effective July 11, 2003.

[FR Doc. E8–26492 Filed 11–7–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2331; MB Docket No. 07–280; RM–11379]

Radio Broadcasting Services; Linden, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division grants a Petition for Rule Making issued at the request of George S. Flinn, Jr., proposing the allotment of Channel 267A at Linden, Tennessee, as its first local service. Channel 267A at Linden can be allotted, consistent with the minimum distance separation requirements of the Commission's Rules, at reference coordinates 35–39–45 NL and 87–44–25 WL with the imposition of a site restriction of 10.1 kilometers (6.3 miles) northeast of Linden. Due to the fact that Channel 267A at Linden already exists in the FM Table of Allotments, this final rule does not contain any amendatory language. *See* Supplementary Information, *supra*.

DATES: Effective December 8, 2008.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 07–280, adopted October 22, 2008, and released October 24, 2008. The *Notice of Proposed Rule Making* proposed the allotment of Channel 267A at Linden, Tennessee. See 73 FR 2211, published January 14, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The allotment of Channel 267A at Linden was allotted herein to prevent removal of Linden's sole local service due to the grant of a contingent hybrid community of license application, File No. BNPH–20070502AFM. The FM Table already lists vacant but applied for Channel 267A at Linden. *See* 67 FR 59213, published September 20, 2002. In this regard, George S. Flinn, Jr. was the winning bidder of this vacant Linden allotment in Auction 70 for authority to construct a new FM station. Thereafter, the applicant filed a hybrid community of license application to substitute Channel 264C3 for vacant but applied for Channel 267A at Linden, reallot Channel 264C3 from Linden to Waynesboro, Tennessee, as its first local service, and modify the new FM station license to specify Channel 264C3 at Waynesboro. *See* BNPH–20070502AFM. The application was granted simultaneously with the release of the Report and Order in this proceeding. As a result, the Media Bureau's Consolidated Database System will reflect the assignment of Channel 264C3 at Waynesboro, Tennessee in lieu of Channel 267A at Linden, Tennessee for this new FM station.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–26742 Filed 11–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2345; MB Docket No. 08–67; RM–11426]

Radio Broadcasting Services; La Grande and Prairie City, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to Petition for Rule Making filed by KSRV, Inc., licensee of Station KWRL, Channel 225C1, La Grande, Oregon, this document substitutes Channel 272C for vacant Channel 260C at Prairie City, Oregon. This substitution will enable Station KWRL to continue operation on Channel 260C1. This document also dismisses a Counterproposal filed by Pacific Empire Radio Corporation. The reference coordinates for the Channel 272C allotment at Prairie City, Oregon, are 45–07–21 and 117–46–44. With this action, this proceeding is terminated.

DATES: Effective December 8, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MB Docket No. 08–67, adopted October 22, 2008, and released October 24, 2008. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copying and Printing, Inc. 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202(b) [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 260C and adding Channel 272C at Prairie City.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–26739 Filed 11–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 07–91; FCC 07–228]

Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection(s) associated with Section 73.624(g) of the rules, and that this revised rule will take effect as of the date of this notice. On January 30, 2008, the Commission published the

summary document of the Report and Order, *In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07–91, FCC 07–228, at 73 FR 5634. The Ordering Clause of the Report and Order stated that the Commission would publish a notice in the **Federal Register** announcing when OMB approval for this rule section has been received and when the revised rule will take effect. This notice is consistent with the statement in the Report and Order.

DATES: Effective November 10, 2008.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Evan Baranoff, *Evan.Baranoff@fcc.gov*, or Kim Matthews, *Kim.Matthews@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This document announces that, on October 31, 2008, OMB approved, for a period of three years, the information collection requirement(s) contained in section 73.624(g) of the rules. The Commission publishes this notice to announce the effective date of this rule. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060–0906, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on October 31, 2008, for the information collection requirement(s) contained in the Commission's rules at 47 CFR 73.624(g).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB Control Number.

The OMB Control Number is 3060–0906 and the total annual reporting burden for respondents for this collection of information is as follows:

OMB Control Number: 3060–0906.

OMB Approval Date: 10/31/2008.

Expiration Date: 10/31/2011.

Title: Annual DTV Report, FCC Form 317; 47 CFR Section 73.624(g).

Form Number: FCC Form 317.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents/Responses: 1,815 respondents; 3,630 responses.

Estimated Hours per Response: 2.0 hours–4.0 hours

Frequency of Response: Recordkeeping requirement; Annual reporting requirement.

Total Annual Burden: 10,890 hours.

Annual Burden Cost: $181,500.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303, 336 and 403 of the Communications Act of 1934, as amended.

Nature and Extend of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. On December 22, 2007, the Commission adopted a Report and Order *In the matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07–91, FCC 07–228, to establish the rules, policies and procedures necessary to complete the nation's transition to DTV. Specifically, as a result of the Report and Order, DTV stations that are permittees must comply with the requirements for feeable ancillary or supplementary services in section 73.624(g) (using FCC Form 317).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–26738 Filed 11–7–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XL65

Fisheries of the Exclusive Economic Zone Off Alaska; Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This closure also does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA. This action is necessary to prevent exceeding the 2008 Pacific halibut prohibited species catch (PSC) limit specified for vessels using trawl gear in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 6, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 Pacific halibut PSC limit for vessels using trawl gear was established as 2,000 metric tons by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 679.21(d)(7)(i), the Regional Administrator has determined that the 2008 Pacific halibut PSC limit allocated to vessels using trawl gear in the GOA will soon be reached. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This closure also does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay closing directed fishing for groundfish by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 4, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 5, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–26701 Filed 11–5–08; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 73, No. 218

Monday, November 10, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 340

[Docket No. APHIS–2008–0023]

RIN 0579–AC31

Importation, Interstate Movement, and Release Into the Environment of Certain Genetically Engineered Organisms; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: We are correcting an error in our proposed rule to revise the regulations regarding the importation, interstate movement, and environmental release of certain genetically engineered organisms. The proposed rule was published in the **Federal Register** on October 9, 2008 (73 FR 60008–60048, Docket No. APHIS 2008–0023).

FOR FURTHER INFORMATION CONTACT: Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5710.

SUPPLEMENTARY INFORMATION:

On October 9, 2008, we published in the **Federal Register** (73 FR 60008–60048, Docket No. APHIS 2008–0023) a proposed rule to revise the regulations regarding the importation, interstate movement, and environmental release of certain genetically engineered organisms.

In the SUPPLEMENTARY INFORMATION section of the proposed rule on page 60037, under the heading ''D. Executive Order 12988,'' we stated that, if this proposed rule is adopted, no State or local laws or regulations would be preempted by this rule. This information is incorrect. We should have stated that, if this proposed rule is adopted, all State and local laws and regulations that are inconsistent with this rule will be preempted. This document corrects that error.

Correction

In FR Doc. E8–23584, published on October 9, 2008 (73 FR 60008–60048), make the following correction: On page 60037, first column, under the heading ''D. Executive Order 12988,'' correct ''No State or local laws or regulations would be preempted by this rule'' to read ''All State and local laws or regulations that are inconsistent with this rule will be preempted''.

Done in Washington, DC this 5th day of November 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–26717 Filed 11–7–08; 8:45 am]

BILLING CODE 3410–34–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, and 416

[Docket No. SSA–2007–0053]

Compassionate Allowances for Brain Injuries; Office of the Commissioner, Hearing

AGENCY: Social Security Administration (SSA).

ACTION: Announcement of Public Hearing.

SUMMARY: We are considering ways to quickly identify diseases and other serious medical conditions that obviously meet the definition of disability under the Social Security Act (Act) and can be identified with minimal objective medical information. We are calling this method ''Compassionate Allowances.'' In December 2007 and April 2008, we held two Compassionate Allowance public hearings. These hearings concerned rare diseases and cancers, respectively. This hearing is the third in the series. The purpose of this hearing is to obtain your views about the advisability and possible methods of identifying and implementing compassionate allowances for children and adults with brain injuries. We plan to address other medical conditions at subsequent hearings.

DATES: This hearing will be held on November 18, 2008, between 8:30 a.m. and 5 p.m. Eastern Standard Time (EST), at Ft. Myer, VA. The hearing will be held at 204 Lee Avenue, Ft. Myer, VA, 22211–1199, at the Ft. Myer Officers Club. While the public is welcome to attend the hearing, only invited witnesses will be permitted to participate. Ft. Myer is open to members of the public willing to undergo security screening. You may also watch the proceedings live via webcast beginning at 9 a.m. Eastern Standard Time (EST). You may access the webcast for the hearing on the Social Security Administration Web page at *http://www.socialsecurity.gov/compassionateallowances/hearings1108.htm.*

ADDRESSES: You may submit up to two pages of written comments about the compassionate allowances initiative with respect to children and adults with brain injuries, as well as topics covered at the hearing by: (1) E-mail addressed to *Compassionate.Allowances@ssa.gov* or (2) mail to Diane Braunstein or Nancy Schoenberg, Office of Compassionate Allowances and Disability Outreach, ODP, ORDP, Social Security Administration, 4671 Annex, 6401 Security Boulevard, Baltimore, MD 21235–6401.

FOR FURTHER INFORMATION CONTACT: *Compassionate.Allowances@ssa.gov.* You may also mail inquiries about this meeting to Diane Braunstein or Nancy Schoenberg, Office of Compassionate Allowances and Disability Outreach, ODP, ORDP, Social Security Administration, 4671 Annex, 6401 Security Boulevard, Baltimore, MD 21235–6401. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under titles II and XVI of the Act, we pay benefits to individuals who meet our rules for entitlement and have medically determinable physical or mental impairments that are severe enough to meet the definition of disability in the Act. The rules for determining disability can be very complicated, but some individuals have such serious medical conditions that their conditions obviously meet our disability standards. To better address the needs of these individuals, we are implementing the Compassionate Allowance initiative to quickly identify diseases and other medical conditions that invariably qualify under the Listing of Impairments based on minimal objective medical information.

Will We Respond to Your Comments?

We will carefully consider your comments, although we will not respond directly to comments sent in response to this notice or the hearing.

Additional Hearings

We held a hearing on rare diseases on December 4 and 5, 2007, and a hearing on cancers on April 7, 2008. You may access the transcripts of both hearings at *http://www.socialsecurity.gov/compassionateallowances.* We plan to hold additional hearings on other conditions and will announce those hearings later with notices in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.006, Supplemental Security Income. (72 Fed. Reg. at 62608)).

Dated: November 3, 2008.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E8–26682 Filed 11–7–08; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2008–0033]

RIN 0960–AG61

Setting the Time and Place for a Hearing before an Administrative Law Judge

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to amend our rules to clarify that the agency is responsible for setting the time and place for a hearing before an administrative law judge (ALJ). Consistent with our regulations at lower levels of the administrative process, we propose to use ''we'' or ''us'' in the rules setting the time and place for a hearing. These changes will ensure greater flexibility in scheduling hearings both in person and via video teleconferencing and will aid us in our effort to increase efficiency in the hearing process and reduce the number of pending hearings. The number of cases awaiting a hearing has reached historic proportions, and efforts toward greater efficiency are critical to addressing this problem.

DATES: To be sure that we consider your comments, we must receive them no later than January 9, 2009.

ADDRESSES: You may submit comments by any one of four methods—Internet, facsimile, regular mail, or hand-delivery. Commenters should not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA–2008–0033 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking portal at *http://www.regulations.gov.* (This is the most expedient method for submitting your comments, and we strongly urge you to use it.) In the ''Search Documents'' section of the webpage, type ''SSA–2008–0033'', select ''Go,'' and then click ''Send a Comment or Submission.'' The Federal eRulemaking portal issues you a tracking number when you submit a comment.
2. Telefax to (410) 966–2830.
3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703.
4. Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by making arrangements with the contact person shown in this preamble.

Caution: All comments we receive from members of the public are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov.* Therefore, you should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

FOR FURTHER INFORMATION CONTACT: Brent Hillman, Social Security Administration, 5107 Leesburg Pike, Falls Church, Virginia 22041–3260, (703) 605–8280, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Introduction

We are committed to improving the efficiency of the hearing process under the Old Age, Survivors, and Disability Insurance (OASDI) programs under title II of the Social Security Act (Act) and the Supplemental Security Income (SSI) program under title XVI of the Act. As part of our plan to carry out that commitment, we propose to amend our rules and clarify that the agency is responsible for setting the time and place for an administrative law judge hearing.

The growth of our pending workloads at the ALJ-hearing level has been well-publicized, and we are attempting to address this growth and prepare for anticipated increases in hearing requests. Our Inspector General audited ALJ productivity and concluded that we must increase productivity if we are to eliminate the hearings backlog. This proposal, in connection with other proposed rule changes, will aid us in increasing the productivity of those ALJs who are not processing a sufficient number of cases and allow us to meet our goal to provide better service to claimants seeking a hearing before an ALJ. We anticipate exercising this authority only in those situations where productivity is below what we need to meet our goal to drive down the backlog.

We recognize that the amendment to clarify that the agency sets the time and place of the hearing may be perceived as unwarranted by the small number of ALJs who may be affected by it. The agency's responsibility to set the time and place of the hearing in no way interferes with the well-respected role of the ALJs to hear and decide cases. While we believe ALJs will accept this principle, we will continue to monitor productivity closely. If hearings are not being performed in a prompt and professional manner, we will use all available existing authorities to correct that situation. We will also monitor the success of this regulation on an agency-wide basis to ensure that it does not produce unintended consequences. Where we do exercise authority to set the time and place for a hearing before an ALJ, we will carefully monitor quality, productivity and accuracy.

Explanation of Changes

In testimony before various congressional committees, we have described the significant challenges that we face in dealing with the historically large number of pending hearing requests. We have explained to the committees that we must process a sufficient number of cases at the hearing level if we are to reduce the hearings backlog. We have testified that a minority of ALJs do not schedule enough hearings, and that our current rules do not provide adequate avenues for addressing these workload issues. This proposed rule would help us reduce the number of pending hearing requests and meet the needs of the public.

In addition, Social Security's Inspector General conducted an audit of ALJ caseload performance. In the final report of his findings, the Inspector General stated that in fiscal year (FY) 2006, 502 of the 895 fully available ALJs processed fewer than 500 cases. ''If the 502 ALJs processed 500 cases each and the remaining fully and partially available ALJs' production remained constant, [we] would be able to stay abreast of incoming hearing requests and make progress in reducing the backlog through FY 2012.'' *Administrative Law Judges' Caseload Performance,* A–07–07–17072 p. 8 (Feb. 6, 2008). Nevertheless, even at that level of production, we would need 87 additional ALJs over the FY 2006 ALJ level to eliminate the backlog by 2013. *Id.*

We now expect that over the coming years, we will receive a significant increase in the number of hearing requests over the number that the Inspector General had accounted for in his report. As a consequence, we expect that ALJs will need to process at least 500 cases per year in order to meet our goals for 2013.

Under our current rules, ALJs may set the time and place for hearings. In practice, each ALJ presents hearing office staff with a schedule of times that he or she is available to conduct administrative hearings. We know that under this process, some ALJs, but certainly not all, do not always present the scheduling staff with sufficient available hours to process the number of cases needed to reduce the backlog of pending hearing requests.

Conflicts with medical and vocational experts' and contract hearing recorders' schedules may further impede our ability to schedule a sufficient number of hearings to drive down the backlog. The hearing office staff also attempts to coordinate scheduling with the claimant's representative, if any, to avoid potential scheduling conflicts. These conflicts escalate when an ALJ does not allot sufficient available times to hold hearings. Consequently, through this proposed rule, we could ensure that those ALJs who do not process a sufficient number of cases have enough of them docketed for hearings to drive down and eliminate the backlog by 2013.

By using a broader range of available times and dates, we will more efficiently schedule an adequate number of hearings to meet our goals. The proposed changes would permit us to more uniformly distribute the hearings workload to meet the needs of the entire hearing office. We expect that we will need to exercise this authority in only those situations where an ALJ is not scheduling the number of hearings that we consider sufficient.

Further, this proposal would assist in the development of the electronic scheduling initiative. We are planning to implement electronic scheduling of hearings which will ease the integration of the schedules of ALJs, experts, claimants, claimants' representatives, hearing recorders, and the availability of hearing rooms.

Relation to Other Proposed Changes

We recognize that we have already proposed changes to some of these rules (72 FR 61218 (2007)), but have not finalized those proposed changes to sections 404.936, 404.938, 404.950, 416.1436, 416.1438, and 416.1450. Should those proposed changes become final, we intend to modify the changes proposed herein accordingly as necessary.

Clarity of These Proposed Rules

Executive Order 12866, as amended, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

• Have we organized the material to suit your needs?

• Are the requirements in the rules clearly stated?

• Do the rules contain technical language or jargon that isn't clear?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?

• Would more (but shorter) sections be better?

• Could we improve clarity by adding tables, lists, or diagrams?

• What else could we do to make the rules easier to understand?

When Will We Start To Use These Rules?

We will not use these rules until we evaluate the public comments we receive on them, determine whether they should be issued as final rules, and issue final rules in the **Federal Register**. If we publish final rules, we will explain in the preamble how we will apply them, and summarize and respond to the public comments. Until the effective date of any final rules, we will continue to use our current rules.

Regulatory Procedures

Executive Order 12866, As Amended

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, they were subject to OMB review.

The Office of the Chief Actuary estimates that this proposed rule, if finalized, would increase the program costs of the OASDI and SSI programs by $1.2 billion. The table below presents our estimates of the increases in OASDI benefit payments and Federal SSI payments over the fiscal year period 2009–18 resulting from the increases in ALJ dispositions assumed to occur as a result of the proposed rule change. The estimates are consistent with the assumptions underlying the Mid-Session Review of the President's FY 2009 Budget, and assume that the proposed rule will be published as a final rule on July 1, 2009.

TABLE 1—ESTIMATED INCREASES IN OASDI BENEFITS AND FEDERAL SSI PAYMENTS

[In millions]

Fiscal year	OASDI	SSI	Total
2009	....	....	....
2010	$16	$4	$19
2011	40	11	50
2012	68	15	83
2013	97	24	121
2014	127	32	159
2015	158	40	198
2016	159	46	205
2017	155	45	200
2018	146	44	189
Totals:			
2009–13	219	54	273
2009–18	964	261	1,225

(Totals may not equal the sum of components due to rounding.)

In providing estimates of the effects of this change on benefits, we assume that under the proposed rule the agency would begin scheduling hearings for a small number of judges in FY 2010, resulting in a modest increase in the number of ALJ dispositions that year.

Through 2018, we project that the additional benefit outlays associated with this regulation would be about $964 million for OASDI and about $261 million for SSI. Over the long-range 75-year projection period, we estimate that this rule would increase benefits by a negligible amount (i.e., less than 0.005 percent of taxable payroll).

TABLE 2—ACCOUNTING STATEMENT: ESTIMATED ECONOMIC IMPACT OF PROVIDING AUTHORITY FOR SSA TO SCHEDULE ADMINISTRATIVE LAW JUDGE HEARINGS, FISCAL YEARS 2009–2018 IN 2008 DOLLARS

Category	Transfers
Annualized Monetized Transfers.	$91.3 million (7% discount rate). $97.7 million (3% discount rate).
From Whom To Whom?	From the Social Security trust funds and the general fund to SSA beneficiaries.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements in the regulation sections listed below. We previously accounted for these public reporting burdens in the Information Collection Requests for the various forms or regulations the public uses to submit the information to SSA. Consequently, we are inserting a 1-hour placeholder burden in these sections.

Regulation section	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden
404.932/416.1432	SSA may notify a person to appear at an ALJ hearing or present evidence if SSA decides the person will be affected by the ALJ's decision.				1 hour.
404.936(d)–(e)/416.1436(d)–(e).	If someone objects to the time/place of the scheduled ALJ hearing, the person must notify SSA and provide good cause for changing the hearing's time or place.				1 hour.
404.938(a)/416.1438(a)	SSA will notify affected parties of the time/place of an ALJ hearing, unless those parties have previously stated in writing they do not want to receive this notice.				1 hour.

SSA submitted an Information Collection Request for clearance of these regulation sections to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following: Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov*. Social Security Administration, Attn: Reports Clearance Officer, 6401 Security Blvd., Baltimore, MD 21235–0001, Fax Number: 410–965–6400, E-mail: *OPLM.RCO@ssa.gov*.

You can submit comments for up to 60 days after the publication of this notice; however, your comments will be most useful if you send them to SSA within 30 days of publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods.

(Catalog of Federal Domestic Assistance Program No. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors, and Disability insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: November 3, 2008.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart J of part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend § 404.932 by revising the second sentence of paragraph (b) to read as follows:

§ 404.932 Parties to a hearing before an administrative law judge.

* * * * *

(b) * * * In addition, any other person may be made a party to the hearing if his or her rights may be adversely affected by the decision, and we notify the person to appear at the hearing or to present evidence supporting his or her interest.

3. Amend § 404.936 by revising the first and second sentences of paragraph (a) and paragraphs (c), (d), and (e) introductory text to read as follows:

§ 404.936 Time and place for a hearing before an administrative law judge.

(a) *General.* We set the time and place for the hearing. We may change the time and place, if it is necessary. * * *

* * * * *

(c) *Determining how appearances will be made.* In setting the time and place of the hearing, we will consult with the administrative law judge, who will determine whether your appearance or that of any other individual who is to appear at the hearing will be made in person or by video teleconferencing. The administrative law judge will determine that the appearance of an individual be conducted by video teleconferencing if video teleconferencing technology is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge determines that there is no circumstance in the particular case that prevents the use of video teleconferencing to conduct the appearance. Section 404.950 sets forth procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

(d) *Objecting to the time and place of the hearing.* If you object to the time or place of your hearing, you must notify us at the earliest possible opportunity before the time set for the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held. If at all possible, the request should be in writing. We will change the time or place of the hearing if the administrative law judge finds you have good cause, as determined under paragraph (e) and (f) of this section. Section 404.938 provides procedures we will follow when you do not respond to a notice of hearing.

(e) *Good cause for changing the time or place.* If you have been scheduled to appear for your hearing by video teleconferencing and you notify us as provided in paragraph (d) of this section that you object to appearing in that way, the administrative law judge will find your wish not to appear by video teleconferencing to be a good reason for changing the time or place of your scheduled hearing and we will reschedule your hearing for a time and place at which you may make your appearance before the administrative law judge in person. The administrative law judge will also find good cause for changing the time or place of your scheduled hearing, and we will reschedule your hearing, if your reason is one of the following circumstances and is supported by the evidence:

* * * * *

4. Amend § 404.938 by revising the first sentence of paragraph (a) to read as follows:

§ 404.938 Notice of a hearing before an administrative law judge.

(a) *Issuing the notice.* After we set the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice. * * *

* * * * *

5. Revise the third sentence of § 404.950(b) to read as follows:

§ 404.950 Presenting evidence at a hearing before an administrative law judge.

* * * * *

(b) * * * Even if all of the parties waive their right to appear at a hearing, we may notify them of a time and a place for an oral hearing, if the administrative law judge believes that a personal appearance and testimony by you or any other party is necessary to decide the case.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

6. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383(b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

7. Amend § 416.1432 by revising the second sentence of paragraph (b) to read as follows:

§ 416.1432 Parties to a hearing before an administrative law judge.

* * * * *

(b) * * * In addition, any other person may be made a party to the hearing if his or her rights may be adversely affected by the decision, and we notify the person to appear at the hearing or to present evidence supporting his or her interest.

8. Amend § 416.1436 by revising the first and second sentences of paragraph (a) and paragraphs (c), (d), and (e) introductory text to read as follows:

§ 416.1436 Time and place for a hearing before an administrative law judge.

(a) *General.* We set the time and place for the hearing. We may change the time and place, if it is necessary. * * *

* * * * *

(c) *Determining how appearances will be made.* In setting the time and place of the hearing, we will consult with the administrative law judge, who will determine whether your appearance or that of any other individual who is to appear at the hearing will be made in person or by video teleconferencing. The administrative law judge will determine that the appearance of an individual be conducted by video teleconferencing if video teleconferencing technology is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge determines that there is no circumstance in the particular case that prevents the use of video teleconferencing to conduct the appearance. Section 416.1450 sets forth procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

(d) *Objecting to the time and place of the hearing.* If you object to the time or place of your hearing, you must notify us at the earliest possible opportunity before the time set for the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held. If at all possible, the request should be in writing. We will change the time or place of the hearing if the administrative law judge finds you have good cause, as determined under paragraph (e) and (f) of this section. Section 416.1438 provides procedures we will follow when you do not respond to a notice of hearing.

(e) *Good cause for changing the time or place.* If you have been scheduled to appear for your hearing by video teleconferencing and you notify us as provided in paragraph (d) of this section that you object to appearing in that way, the administrative law judge will find your wish not to appear by video teleconferencing to be a good reason for changing the time or place of your scheduled hearing and we will reschedule your hearing for a time and place at which you may make your appearance before the administrative law judge in person. The administrative law judge will also find good cause for changing the time or place of your scheduled hearing, and we will reschedule your hearing, if your reason is one of the following circumstances and is supported by the evidence:

* * * * *

9. Amend § 416.1438 by revising the first sentence of paragraph (a) to read as follows:

§ 416.1438 Notice of a hearing before an administrative law judge.

(a) *Issuing the notice.* After we set the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice. * * *

* * * * *

10. Revise the third sentence of § 416.1450(b) to read as follows:

§ 416.1450 Presenting evidence at a hearing before an administrative law judge.

* * * * *

(b) * * * Even if all of the parties waive their right to appear at a hearing, we may notify them of a time and a place for an oral hearing, if the administrative law judge believes that a personal appearance and testimony by you or any other party is necessary to decide the case.

* * * * *

[FR Doc. E8–26681 Filed 11–7–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118327–08]

RIN 1545–BH98

Information Reporting for Discharges of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing final and temporary regulations relating to information returns for cancellation of indebtedness by certain entities. The temporary regulations will avoid premature information reporting from certain businesses that are currently required to report and will reduce the number of information returns required to be filed. The regulations will impact certain lenders who are currently required to file information returns under the existing regulations. The text of those temporary regulations also serves as text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 9, 2009. Outlines of topics to be discussed at the public hearing scheduled for March 13, 2009, must be received by February 13, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–118327–08), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–118327–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG 118327–08). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Barbara Pettoni at (202) 622–4910; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR Part 1) under section 6050P relating to information reporting for cancellation of indebtedness by certain entities. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. The proposed regulations under section 6050P do not impose a collection of information on small entities. Therefore, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. The proposed regulations will reduce the number of information returns required to be filed under section 6050P rather than impose a collection of information on entities. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing has been scheduled for March 13, 2009, beginning at 10:00 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by February 9, 2009 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by February 13, 2009.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Barbara Pettoni, Office of Associate Chief Counsel (Procedure and Administration).

List of Subjects 26 CFR Part 1

Income tax, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6050P–0 is amended as follows:

1. The introductory text is revised.
2. The entries in § 1.6050P–1(b)(2)(v) and (h)(1) are revised.
3. The entry for § 1.6050P–1T is removed.

The revisions read as follows:

§ 1.6050P–0 Table of contents.

This section lists the major captions that appear in § 1.6050–P–1 and § 1.6050P–2.

* * * * *

§ 1.6050P–1 Information reporting for discharges of indebtedness by certain entities.

* * * * *

(b) * * *

(2) * * *

(v) [The text of the proposed entry for § 1.6050P–1(b)(2)(v) is the same as the text in § 1.6050P–1T(b)(2)(v) in § 1.6050P–0 published elsewhere in this issue of the **Federal Register**]

* * * * *

(h) * * *

(1) [The text of the proposed entry for § 1.6050P–1(h)(1) is the same as the text of § 1.6050P–1T(h)(1) in § 1.6050P–0 published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 1.6050P–1 is amended by revising paragraphs (b)(2)(i)(H), (b)(2)(v) and (h)(1) to read as follows:

§ 1.6050P–1 Information reporting for discharges of indebtedness by certain entities.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(H) [The text of the proposed amendments to § 1.6050P–1(b)(2)(i)(H) is the same as the text of § 1.6050P–1T(b)(2)(i)(H) published elsewhere in this issue of the **Federal Register**].

* * * * *

(v) [The text of the proposed amendments to § 1.6050P–1(b)(2)(v) is the same as the text of § 1.6050P–1T(b)(2)(v) published elsewhere in this issue of the **Federal Register**].

* * * * *

(h)(1) [The text of the proposed amendments to § 1.6050P–1(h) is the same as the text of § 1.6050P–1T(h) published elsewhere in this issue of the **Federal Register**].

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–26674 Filed 11–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–029–FOR, Docket ID: OSM–2008–0022]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Montana proposes additions of rules and revisions to the Administrative Record of Montana (ARM) concerning Normal Husbandry Practices. Montana intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., mountain standard time December 10, 2008. If requested, we will hold a public hearing on the amendment on December 5, 2008. We will accept requests to speak until 4 p.m., mountain standard time, on November 25, 2008.

ADDRESSES: You may submit comments, identified by ''MT–029–FOR'', using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID OSM–2008–0022. If you would like to submit comments via the Federal eRulemaking portal, go to *http://www.regulations.gov* and do the following. Click on the ''Advanced Docket Search'' button on the right side of the screen. Type in the Docket ID OSM–2008–0022 and click on the ''Submit'' button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2008–0022, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.
- *Mail, Hand Delivery/Courier:* Jeff Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, WY 82601–1018, (307) 261–6550.
- *Fax:* (307) 261–6552.

Instructions: All submissions received must include the agency name and MT–029–FOR. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Access to the docket to review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM's) Casper Field Office. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Jeff Fleishman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 150 East B Street, Room 1018, Casper, WY 82601–1018, Telephone: (307) 261–6550, E-mail: *jfleischman@osmre.gov*.

Neil Harrington, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620–0901, Telephone: (406) 444–2544, E-mail: *neharrington@mt.gov*.

Or anytime at: *http://www.regulations.gov*, Docket ID OSM–2008–0022.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Proposed Amendment

By letter dated July 3, 2008, Montana sent us a proposed amendment to its program (SATS No. MT–029–FOR) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana sent the amendment to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Montana is proposing additions of rules and revisions to the Administrative Record of Montana (ARM) involving Normal Husbandry Practices. 30 CFR 816.116(c)(4) states that ''the regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from the Director in accordance with Section 732.17 of this chapter that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding, and transplanting specifically necessitated by such actions''. Montana is requesting approval for the list of Normal Husbandry Practices that mine operators may employ without restarting the responsibility period prior to application for Phase III bond release.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

Electronic or Written Comments

Send your written comments to OSM at the addresses given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications.

We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Denver Field Division may not be logged in.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., mountain standard time on November 25, 2008. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the docket for this rulemaking.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 21, 2008.

Allen D. Klein,

Regional Director, Western Region.

[FR Doc. E8–26703 Filed 11–7–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0456]

RIN 1625–AA09

Drawbridge Operation Regulations; Harlem River, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Supplemental Notice of proposed rulemaking.

SUMMARY: The Coast Guard is issuing a supplemental notice of proposed rulemaking to revise our notice of proposed rulemaking (73 FR 45922) published on August 7, 2008. The notice of proposed rulemaking did not include a provision to allow ten of the eleven moveable bridges across the Harlem River to remain closed during the morning and afternoon commuter rush hours. It also did not specify the maximum time railroad bridges may delay bridge openings for the passage of rail traffic.

DATES: Comments and related material must reach the Coast Guard on or before December 10, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0456 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC., 20590–0001.

(3) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except, Federal holidays. The telephone number is (202) 366–9329.

(4) *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, (212) 668–7165.

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0456), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and materials by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and materials by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0456) in the Search box, and click ''Go>>.'' You may also visit either the Docket Management Facility in Room W12–140, on the ground floor of the Department of Transportation West Building 1200 New Jersey Avenue, SE., Washington, DC, 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or First Coast Guard District, Bridge Branch, One South Street, New York, NY, 10004, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment), if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On August 7, 2008, we published a notice of proposed rulemaking (73 FR 45922); wherein, we proposed to change the drawbridge operation regulations governing the operation of all bridges across the Harlem River, New York.

We did not include in our original notice of proposed rulemaking our proposal to require ten of the eleven moveable bridges across the Harlem River to remain closed during the morning and afternoon commuter rush hours, Monday through Friday and the maximum time railroad bridges may delay bridge openings for the passage of rail traffic. This supplemental notice of proposed rulemaking will add those additional provisions.

The existing drawbridge operation regulations for the Harlem River, lists the operating hours for eleven moveable bridges. The eleven moveable bridges across the Harlem River provide the following vertical clearances in the closed position:

The 103 Street Bridge has a vertical clearance of 55 feet at mean high water, and 60 feet at mean low water in the closed position.

The 125 Street Bridge has a vertical clearance of 54 feet at mean high water and 59 feet at mean low water in the closed position.

The Willis Avenue Bridge has a vertical clearance of 24 feet at mean high water and 30 feet at mean low water in the closed position.

The Third Avenue Bridge has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position.

The Metro North Park Avenue Bridge has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position.

The Madison Avenue Bridge has a vertical clearance of 25 feet at mean high water and 29 feet at mean low water in the closed position.

The 145 Street Bridge has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position.

The Macombs Dam Bridge has a vertical clearance of 27 feet at mean high water and 32 feet at mean low water in the closed position.

The 207 Street Bridge has a vertical clearance of 26 feet at mean high water and 30 feet at mean low water in the closed position.

The two Broadway Bridges have a vertical clearance of 24 feet at mean high water and 29 feet at mean low water in the closed position.

The Spuyten Duyvil Bridge has a vertical clearance of 5 feet at mean high water and 9 feet at mean low water in the closed position.

The existing drawbridge operating regulations listed at 33 CFR 117.789, require all the moveable bridges across the Harlem River, except the Spuyten Duyvil Bridge, to open on signal from 10 a.m. to 5 p.m. after at least a four-hour notice is given to the New York City Highway Radio (Hotline) Room, and from 5 p.m. and 10 a.m. all the bridges, except the Spuyten Duyvil Bridge, need not open for vessel traffic.

The moveable bridges across the Harlem River, listed above, provide at least 24 feet of vertical clearance in the closed position, except for the Spuyten Duyvil Bridge.

The Spuyten Duyvil Bridge is much lower in vertical clearance, and as a result, is required under the existing regulations to open on signal at all times for the passage of vessel traffic.

Discussion of Proposed Rule

Under the existing drawbridge operation regulations ten of the eleven moveable bridges listed presently do not open for vessel traffic between 5 p.m. and 10 a.m. each day.

The Spuyten Duyvil Bridge railroad bridge, which is much lower in vertical clearance than all the other bridges, is the only moveable bridge listed in the existing regulations that provides bridge openings at all times of the day.

The Coast Guard is proposing to change the existing regulations to require the bridges in the existing regulations that do not normally open for vessel traffic between 5 p.m. and 10 a.m. to now open after at least a four-hour advance notice is given.

The Coast Guard believes that all bridges over navigable waterways should open for vessel traffic at any time either on signal or after an advance notice is given unless there is no existing navigation presently utilizing the waterway.

In addition, the Coast Guard is also proposing that ten of the eleven moveable bridges need not open for the passage of vessel traffic during the morning and afternoon commuter rush hours to help reduce both vehicular traffic delays and delays to commuter trains during the work week, Monday through Friday.

The draws of the 103 Street Bridge, 125 Street Bridge, Willis Avenue Bridge, Third Avenue Bridge, Madison Avenue Bridge, 145 Street Bridge, Macombs Dam, 207 Street Bridge and the Broadway Bridge would need not open for vessel traffic between 6 a.m. and 9 a.m. and between 5 p.m. and 7 p.m., Monday through Friday, except holidays.

The draw of the Metro North Park Avenue Bridge at mile 2.1, would need not open during the commuter train rush hours from 5 a.m. to 10 a.m. and from 4 p.m. to 8 p.m., Monday through Friday, except holidays.

Additionally, the maximum time the railroad bridges across the Harlem River may delay bridge openings for the passage of rail traffic shall be clearly defined as ten minutes and the language in existing regulation allowing public vessels of the United States to be passed through each bridge in this section as soon as possible, will be removed because it is now required under 33 CFR 117.31, as part of the General Requirements for bridges.

Regulatory Analysis

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analysis based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This proposed rule is not a significant regulatory action. This conclusion is based on the fact that vessel traffic will be able to obtain bridge openings 24-hours each day instead of the existing seven-hour window for bridge openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that vessel traffic will be able to obtain bridge openings 24-hours each day instead of the existing seven-hour window.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact, Commander (dpb), First Coast Guard District, Bridge Branch, One South Street, New York, NY, 10004. The telephone number is (212) 668–7165. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 5100.1, and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117.

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. Section 117.789 is revised to read as follows:

§ 117.789 Harlem River.

(a) The draws of all railroad bridges across the Harlem River may remain in the closed position from the time a train scheduled to cross the bridge is within five minutes from the bridge, and until that train has fully crossed the bridge. The maximum time permitted for delay shall not exceed ten (10) minutes. Land and water traffic should pass over or through the draw as soon as possible in order to prevent unnecessary delays in the opening and closure of the draw.

(b)(1) The draws of the bridges at 103 Street, mile 0.0, 125 Street (Triborough), mile 1.3, Willis Avenue, mile 1.5, Third Avenue, mile 1.9, Madison Avenue, mile 2.3, 145 Street, mile 2.8, Macombs Dam, mile 3.2, 207 Street, mile 6.0, and the Broadway Bridge, mile 6.8, shall open on signal if at least a four-hour advance notice is given to the New York City Highway Radio (Hotline) Room. The draws need not open for the passage of vessel traffic from 6 a.m. to 9 a.m. and 5 p.m., to 7 p.m., Monday through Friday, except holidays.

(2) The draws of the Willis Avenue Bridge, mile 1.5, Third Avenue Bridge, mile 1.9, and the Madison Avenue Bridge, mile 2.3, need not open for the passage of vessel traffic at various times between 8 a.m. and 5 p.m. on the first Sunday in May and November. The exact time and date of each bridge closure will be published in the Local Notice to Mariners several weeks prior to each closure.

(c) The draw of the Metro North (Park Avenue) Bridge, mile 2.1, shall open on signal, except, as provided in paragraph (a) of this section, if at least a four-hour advance notice is given. The draw need not open for the passage of vessel traffic from 5 a.m. to 10 a.m. and 4 p.m. to 8 p.m., Monday through Friday, except holidays.

(d) The draw of the Spuyten Duyvil railroad bridge, mile 7.9, shall open on signal at all times, except as provided in paragraph (a) of this section.

Dated: October 28, 2008.

Dale G. Gabel,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. E8–26669 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–1017]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before February 9, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1017, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency

(FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Miller County, Arkansas, and Incorporated Areas				
McKinney Bayou Tributary 2A.	Approximately 4,306 feet downstream from the intersection of Shugar Hill Road and McKinney Bayou Tributary 2A.	None	+272	Unincorporated Areas of Miller County.
	Approximately 630 feet downstream from the intersection of Shugar Hill Road and McKinney Bayou Tributary 2A.	None	+288	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
\# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Miller County

Maps are available for inspection at Miller County Courthouse, 400 Laurel St., Texarkana, AR 71854.

Madison County, Florida, and Incorporated Areas				
Norton Creek	Approximately 2.1 miles upstream of the confluence with the Withlacoochee River.	None	+69	Town of Lee, Unincorporated Areas of Madison County.
	Approximately 0.1 mile upstream of County Road 53	None	+91	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
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Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

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ADDRESSES

Town of Lee

Maps are available for inspection at Lee Town Hall, 286 Northeast County Road 255, Lee, FL.

Unincorporated Areas of Madison County

Maps are available for inspection at Madison County Annex Building, 229 Southwest Pinckney Street, Suite 219, Madison, FL.

Crisp County, Georgia, and Incorporated Areas

Flooding source(s)	Location of referenced elevation **	Effective	Modified	Communities affected
Gum Creek	9,000 feet downstream of West Eleventh Street	None	+277	Unincorporated Areas of Crisp County.
	850 feet downstream of West Eleventh Street	None	+284	

* National Geodetic Vertical Datum.

\+ North American Vertical Datum.

\# Depth in feet above ground.

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ADDRESSES

Unincorporated Areas of Crisp County

Maps are available for inspection at 210 Seventh Street, Cordele, GA 31015.

Dougherty County, Georgia, and Incorporated Areas

Flooding source(s)	Location of referenced elevation **	Effective	Modified	Communities affected
Dry Creek	Approximately 150 feet upstream of Liberty Expressway.	+182	+184	Unincorporated Areas of Dougherty County.
	At Liberty Expressway	+182	+184	
Dry Creek Tributary 1	Approximately 1,875 feet downstream of Moultrie Road.	None	+238	Unincorporated Areas of Dougherty County.
	Approximately 1,275 feet upstream of Moultrie Road	None	+249	
Dry Creek Tributary 4	Approximately 2,400 feet downstream of U.S. Highway 19.	None	+174	Unincorporated Areas of Dougherty County.
	Approximately 4,136 feet downstream of U.S. Highway 19.	None	+174	

* National Geodetic Vertical Datum.

\+ North American Vertical Datum.

\# Depth in feet above ground.

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ADDRESSES

Unincorporated Areas of Dougherty County

Maps are available for inspection at 222 Pine Avenue, Albany, GA 31702.

Lamar County, Georgia, and Incorporated Areas

Flooding source(s)	Location of referenced elevation **	Effective	Modified	Communities affected
Tobesofkee Creek	Approximately 204 feet downstream of Barnesville Corporate Limits.	None	+764	Unincorporated Areas of Lamar County.
	Approximately 1 foot downstream of Barnesville Corporate Limits.	None	+765	

* National Geodetic Vertical Datum.

\+ North American Vertical Datum.

\# Depth in feet above ground.

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Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

ADDRESSES

Unincorporated Areas of Lamar County

Maps are available for inspection at 326 Thomaston Street, Lamar, GA 30204.

Mitchell County, Georgia, and Incorporated Areas

Big Slough	Upstream just within Camilla city limits	None	+161	Unincorporated Areas of Mitchell County.
	Directly downstream of U.S. Hwy 19	None	+163	
	Directly upstream of U.S. Hwy 19	None	+165	
	Upstream of Sylvester Road	None	+169	
Big Slough Tributary 10	Downstream of Moultrie Road	None	+169	Unincorporated Areas of Mitchell County.
	Upstream of S MacArthur Drive	None	+175	

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\+ North American Vertical Datum.
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ADDRESSES

Unincorporated Areas of Mitchell County

Maps are available for inspection at P.O. Box 187, Camilla, GA 31730.

Thomas County, Georgia, and Incorporated Areas

Gatling Branch Tributary 11	Approximately 40 feet upstream of Pine Tree Boulevard.	None	+262	Unincorporated Areas of Thomas County , City of Thomasville.
	Approximately 128 feet downstream of Pine Tree Boulevard.	None	+262	
Wards Creek	Approximately 1,900 feet downstream of Habersham Road.	None	+220	City of Thomasville, Unincorporated Areas of Thomas County.
	Approximately 469 feet upstream of Habersham Road	None	+232	

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ADDRESSES

City of Thomasville

Maps are available for inspection at 111 Victoria Place, Thomasville, GA 31799.

Unincorporated Areas of Thomas County

Maps are available for inspection at P.O. Box 920, Thomasville, GA 31799.

Upson County, Georgia, and Incorporated Areas

Bell Creek	Approximately 1,990 feet upstream of Raines Street	+582	+584	Unincorporated Areas of Upson County.
	Approximately 1,800 feet downstream of Raines Street.	+604	+605	
Potato Creek	Approximately 50 feet downstream of Crest Highway	+615	+616	Unincorporated Areas of Upson County.
	Approximately 5,400 feet upstream of Crest Highway	+636	+637	
Potato Creek Tributary	At Jeff Davis Road	+711	+712	Unincorporated Areas of Upson County.
	Approximately 100 feet upstream of Jeff Davis Road	+713	+714	
Town Branch	Approximately 5,461 feet downstream of Davis Lake Road.	+582	+584	Unincorporated Areas of Upson County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 4,600 feet upstream of Davis Lake Road.	+648	+652	

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ADDRESSES

Unincorporated Areas of Upson County

Maps are available for inspection at P.O. Box 889, Thomaston, GA 30286.

Worth County, Georgia, and Incorporated Areas

Town Creek Tributary 2	Approximately 270 feet upstream of Young Street	None	+358	Unincorporated Areas of Worth County.
	Approximately 10 feet upstream of West Franklin Street.	None	+364	

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\+ North American Vertical Datum.
\# Depth in feet above ground.
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ADDRESSES

Unincorporated Areas of Worth County

Maps are available for inspection at 201 North Main Street, Sylvester, GA 31791.

St. Mary Parish County, Louisiana, and Incorporated Areas

Gulf of Mexico	Base Flood Elevation changes ranging from 8 to 14 feet in the form of Coastal AE zones have been made.	+8–19	+8–14	City of Franklin, City of Morgan City, Town of Berwick.

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ADDRESSES

City of Franklin

Maps are available for inspection at Franklin City Hall, 300 Iberia Street, Franklin, LA 70538.

City of Morgan City

Maps are available for inspection at Morgan City Hall, 512 First Street, Morgan City, LA 70381.

Town of Berwick

Maps are available for inspection at Berwick Town Hall, 3225 Third Street, Berwick, LA 70342.

Gloucester County, New Jersey, and Incorporated Areas

Brunt Mill Branch	At County Boundary	None	+87	Township of Franklin.
	Approximately 1,573 feet upstream of West Boulevard	None	+93	
Delaware River	At County Boundary	+13	+9	Township of Greenwich, Borough of National Park, Borough of Paulsboro, Township of Logan, Township of West Deptford.
	At County Boundary	+14	+9	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Little Ease Run	Approximately 546 feet downstream of East Washington Drive.	None	+103	Borough of Clayton, Borough of Glassboro.
	Approximately 2.1 miles upstream of County Route 610.	None	+119	
Mantua Creek	At mouth	+13	+9	Township of Deptford, Borough of Glassboro, Borough of Paulsboro, Borough of Pitman, Borough of Wenonah, Township of East Greenwich, Township of Mantua, Township of Washington, Township of West Deptford.
	Approximately 62 feet upstream of County Route 634	None	+110	
Oldmans Creek Reach 1	At mouth	+8	+9	Township of Logan.
	Approximately 1,034 feet upstream of Interstate 295	+8	+9	
Pargey Creek	At confluence with Repaupo Creek	+8	+9	Township of East Greenwich, Township of Greenwich, Township of Logan, Township of Woolwich.
	At Swedesboro Avenue	+8	+9	
Raccoon Creek Reach 1	At mouth	+8	+9	Township of Logan, Borough of Swedesboro, Township of Woolwich.
	Approximately 106 feet upstream of Kings Highway	+8	+9	
Raccoon Creek Reach 2	Approximately 3,625 feet downstream of Tomlin Station Road.	None	+12	Township of Elk, Borough of Glassboro, Township of Harrison, Township of Woolwich.
	Approximately 2,707 feet upstream of Richwood Road	None	+110	
Repaupo Creek	At confluence with Delaware River	+8	+9	Township of East Greenwich, Township of Greenwich, Township of Logan.
	Approximately 2,390 feet upstream of State Route 44	+8	+9	
Scotland Run Reach 2	Approximately 420 feet downstream of County Route 610.	None	+111	Borough of Clayton, Township of Franklin, Township of Monroe.
	Approximately 5,825 feet upstream of County Route 610.	None	+118	
South Branch Raccoon Creek.	Confluence with Raccoon Creek Reach 2	None	+16	Township of Harrison, Township of South Harrison.
	Approximately 657 feet upstream of County Route 581.	None	+45	
Still Run #1	At confluence with White Sluice Run	+8	+9	Township of East Greenwich, Township of Greenwich.
	Approximately 0.7 mile upstream of Swedesboro Avenue.	+8	+9	
Still Run #2	Approximately 1,200 feet upstream of State Highway 55.	None	+107	Township of Elk, Borough of Clayton.
	Approximately 5,313 feet upstream of County Route 608.	None	+115	
White Sluice Run	At mouth	+8	+9	Township of Greenwich.
	At confluence with London Branch and Still Run #1	+8	+9	
Woodbury Creek	At mouth	+8	+9	Borough of National Park, City of Woodbury, Township of West Deptford.
	Approximately 7,987 feet upstream of Interstate 295	+8	+9	

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Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Borough of Clayton

Maps are available for inspection at Clayton Borough Hall, 125 North Delsea Drive, Clayton, NJ.

Borough of Glassboro

Maps are available for inspection at Glassboro Borough Hall, 1 South Main Street, Glassboro, NJ.

Borough of National Park

Maps are available for inspection at National Park Borough Hall, 7 South Grove Avenue, National Park, NJ.

Borough of Paulsboro

Maps are available for inspection at Paulsboro Municipal Building, 1211 Delaware Street, Paulsboro, NJ.

Borough of Pitman

Maps are available for inspection at Pitman Borough Hall, 110 South Broadway, Pitman, NJ.

Borough of Swedesboro

Maps are available for inspection at Swedesboro Borough Hall, 1500 Kings Highway, Swedesboro, NJ.

Borough of Wenonah

Maps are available for inspection at Wenonah Borough Office, 1 South West Avenue, Wenonah, NJ.

City of Woodbury

Maps are available for inspection at Woodbury City Hall, 33 Delaware Street, Woodbury, NJ.

Township of Deptford

Maps are available for inspection at Deptford Township Department of Emergency Management, 1011 Cooper Street, Deptford, NJ.

Township of East Greenwich

Maps are available for inspection at East Greenwich Township Hall/Municipal Building, 159 Democrat Road, Mickleton, NJ.

Township of Elk

Maps are available for inspection at Elk Township Hall, 667 Whig Lane Road, Monroeville, NJ.

Township of Franklin

Maps are available for inspection at Franklin Municipal Building, 1571 Delsea Drive, Franklinville, NJ.

Township of Greenwich

Maps are available for inspection at Greenwich Municipal Building, 420 Washington Street, Gibbstown, NJ.

Township of Harrison

Maps are available for inspection at Harrison Municipal Building, 114 Bridgeton Pike, Mullica Hill, NJ.

Township of Logan

Maps are available for inspection at Logan Township Hall, 125 Main Street, Bridgeport, NJ.

Township of Mantua

Maps are available for inspection at Mantua Township Offices, 401 Main Street, Mantua, NJ.

Township of Monroe

Maps are available for inspection at Monroe Township Hall, 125 Virginia Avenue, Williamstown, NJ.

Township of South Harrison

Maps are available for inspection at South Harrison Township Hall, 664 Harrisonville Road, Harrisonville, NJ.

Township of Washington

Maps are available for inspection at Washington Township Municipal Building, 523 Egg Harbor Road, Sewell, NJ.

Township of West Deptford

Maps are available for inspection at West Deptford Municipal Office, 400 Crown Point Road, West Deptford, NJ.

Township of Woolwich

Maps are available for inspection at Woolwich Township Hall, 121 Woodstown Road, Woolwich, NJ.

Middlesex County, New Jersey, and Incorporated Areas

Flooding source(s)	Location of referenced elevation **	Effective	Modified	Communities affected
Ambrose Brook	Approximately 1,875 feet upstream of Stelton Road (Route 529).	None	+78	Township of Edison.
	Approximately 1,820 feet upstream of Stelton Road (Route 529).	None	+78	
Bonygutt Brook	Approximately 700 feet downstream of Bound Brook Road.	+47	+46	Borough of Dunellen, Township of Piscataway.
	Approximately 0.4 mile upstream of South Washington Avenue (Route 529).	+53	+54	
Bound Brook	Upstream side of South Avenue	+49	+47	Township of Piscataway.
	Approximately 750 feet upstream of South Avenue	+49	+48	
Boundary Branch Mill Brook No. 1.	Confluence with Mill Brook No. 1	+38	+45	Borough of Highland Park, Township of Edison.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	To 25 feet downstream of Brookhill Avenue	+70	+74	
Coppermine Brook	Confluence with South Branch Rahway River	+39	+40	Township of Edison, Township of Woodbridge.
	Approximately 1,870 feet upstream of Lincoln Highway (Route 27).	None	+59	
Green Brook	Confluence with Raritan River	+32	+34	Borough of Middlesex.
	Downstream side of New Jersey Central Railroad	+33	+34	
Lake Lefferts	Entire shoreline within Middlesex County	None	+17	Township of Old Bridge.
Lawrence Brook	Confluence with Raritan River	+9	+11	Township of East Brunswick.
	Downstream side of Westons Mill Dam 1	+12	+11	
Matawan Creek	Downstream side of Old Bridge Matawan Road	None	+17	Township of Old Bridge.
	Approximately 0.8 mile upstream of Old Bridge Matawan Road.	None	+25	
Mill Brook No. 1	Confluence with Raritan River	+14	+16	Borough of Highland Park.
	Approximately 955 feet upstream of Harrison Avenue	+44	+45	
Rahway River	Confluence with Arthur Kill	+8	+7	Borough of Carteret, Township of Woodbridge.
	County boundary	+9	+7	
Raritan River	Approximately 1.4 miles downstream of New Jersey Turnpike.	+9	+10	Township of East Brunswick, Borough of Highland Park, Borough of Middlesex, City of New Brunswick, Township of Edison, Township of Piscataway.
	Confluence with Green Brook	+32	+34	
South Branch Rahway River	Upstream side of Wood Avenue	+39	+40	Township of Edison, Township of Woodbridge.
	Approximately 450 feet upstream of County Route 657.	None	+44	
West Branch Mill Brook No. 1.	Confluence with Mill Brook No. 1	+30	+31	Borough of Highland Park.
	Approximately 760 feet upstream of Bartle Court	None	+51	

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\+ North American Vertical Datum.
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ADDRESSES

Borough of Carteret

Maps are available for inspection at Carteret Memorial Municipal Building, 61 Cooke Avenue, Carteret, NJ.

Borough of Dunellen

Maps are available for inspection at 355 North Avenue, Dunellen, NJ 08812.

Borough of Highland Park

Maps are available for inspection at 3141 Bordertown Avenue, Parlin, NJ 08859.

Borough of Middlesex

Maps are available for inspection at 1200 Mountain Avenue, Middlesex, NJ 08846.

City of New Brunswick

Maps are available for inspection at 78 Bayard Street, New Brunswick, NJ 08901.

Township of East Brunswick

Maps are available for inspection at One Jean Walling Civic Center Drive, East Brunswick, NJ 08816.

Township of Edison

Maps are available for inspection at 100 Municipal Boulevard, Edison, NJ 08817.

Township of Old Bridge

Maps are available for inspection at One Old Bridge Plaza, Old Bridge, NJ 08857.

Township of Piscataway

Maps are available for inspection at 455 Hoes Lane, Piscataway, NJ 08854.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

Township of Woodbridge

Maps are available for inspection at One Main Street, Woodbridge, NJ 07095.

McKinley County, New Mexico, and Incorporated Areas

Flooding source(s)	Location of referenced elevation **	Effective	Modified	Communities affected
Little Puerco Wash	Approximately 211 feet upstream of the intersection of Mesa Avenue at Little Puerco Wash.	None	+6543	City of Gallup, McKinley County.
	Approximately 3,696 feet upstream of the intersection of Mesa Avenue and Little Puerco Wash.	None	+6606	
Puerco River	Approximately 2,904 feet upstream of the intersection of Interstate 40 and State Highway 66.	+6469	+6469	City of Gallup, McKinley County.
	Approximately 1,320 feet upstream of the intersection of Ford Drive and the Puerco River.	+6523	+6523	
Zuni River	Approximately 5,700 feet upstream from Indian Service Route 40.	None	+6259	Pueblo of Zuni.
	Approximately 5,016 feet downstream from the Black Rock Lake Reservoir Dam.	+6326	+6327	

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ADDRESSES

City of Gallup

Maps are available for inspection at 110 West Aztec Avenue, Gallup, NM 87301.

McKinley County

Maps are available for inspection at Office of the County Manager, 207 West Hill Avenue, Gallup, NM 87301.

Pueblo of Zuni

Maps are available for inspection at Tribal Court, 1203B State Highway 53, Zuni, NM 87327.

York County, Pennsylvania, and Incorporated Areas

Flooding source(s)	Location of referenced elevation **	Effective	Modified	Communities affected
Bald Eagle Creek	Approximately 170 feet downstream of Bald Eagle Road.	None	+363	Township of Fawn.
	20 feet downstream of Bald Eagle Road	None	+363	
Barsinger Creek & Barsinger Creek Tributary 1.	Approximately 550 feet upstream on Arbor Road	None	+521	Township of North Hopewell.
	Approximately at Stine Hill Road	None	+660	
Bennett Run	At Front Street Bridge over Bennett Run	None	+423	Township of Fairview.
	Approximately 230 feet downstream of Front Street	None	+423	
Centerville Creek	Approximately at confluence of South Branch Codorus Creek and Centerville Creek.	None	+534	Township of Shrewsbury.
	Approximately 300 feet west of intersection of Fissels Church Road and Ridge Road.	None	+623	
	Approximately 1,500 feet downstream of the confluence of Centerville Creek & Centerville Creek Tributary.	None	+671	
	Approximately 1,700 feet upstream of the confluence of Centerville Creek & Centerville Creek Tributary.	None	+712	
Codorus Creek	Approximately 2,000 feet upstream of Furnace Road	None	+275	Township of East Manchester.
	Approximately 7,500 feet upstream of Furnace Road	None	+275	
Codorus Creek	Approximately 2,000 feet upstream of Park Road	None	+519	Township of North Codorus.
	Approximately 500 feet upstream of Park Road at cross section DC.	None	+528	
Conewago Creek	Approximately 1,800 feet upstream of confluence of Conewago and Little Conewago Creek.	None	+290	Township of Conewago.
	Approximately 350 feet downstream of Bull Road	None	+344	
Dogwood Run	Approximately 2,400 feet upstream of Greenhouse Road.	+672	+677	Township of Franklin.
	Approximately 3,300 feet upstream of Greenhouse Road.	None	+692	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Dogwood Run	Approximately 60 feet downstream of the confluence of Dogwood Run and Tributary A.	+523	+526	Borough of Dillsburg.
	Approximately 1,400 feet upstream of Old Mill Road	+529	+531	
Dogwood Run	Approximately 60 feet downstream of the confluence of Dogwood Run and Tributary A.	+523	+526	Township of Carroll.
	Approximately 2,000 feet upstream of Camp Ground Road.	+602	+604	
East Branch Codorus Creek	Approximately 450 feet downstream of Log Road	None	+494	Township of Springfield.
	Approximately 600 feet downstream of Hess Farm Road.	None	+518	
Hartman Run	Approximately 200 feet Southeast of intersection of Lightner Avenue and Walnut Street.	None	+389	Borough of Manchester.
	Approximately 1,500 feet downstream of Forge Hill Road.	None	+418	
Kreutz Creek	Approximately 200 feet South of the end of Owl Valley Road.	None	+424	Township of Windsor, Township of Lower Windsor.
	Approximately 325 feet South of the end of Owl Valley Road.	None	+424	
Little Conewago Creek	Approximately 800 feet upstream of confluence of Conewago and Little Conewago Creek.	None	+289	Township of Conewago.
	Approximately 700 feet downstream of Harrisburg Baltimore Expressway.	None	+323	
Little Conewago Creek	Approximately at Bull Road and Hilton Avenue	None	+374	Township of Dover.
	Approximately at Carlisle Road	None	+381	
Muddy Creek	Approximately at the confluence of Scott Creek & Muddy Creek.	None	+220	Township of Lower Chanceford.
	Approximately at Bridgeton Road	None	+313	
Pine Run	Approximately at confluence of Pine Run and Pine Run Tributary 2.	None	+551	Township of Windsor.
	Approximately 900 feet downstream from the confluence of Pine Run and Pine Run Tributary 1.	None	+587	
South Branch Codorus Creek	Approximately 2,000 feet upstream of intersection of Pennsylvania Railroad and Days Mill Road.	None	+391	Township of North Codorus.
	Approximately at confluence South Branch Codorus Creek & East Branch Codorus Creek.	None	+416	
South Branch Codorus Creek	Approximately at confluence of South Branch Creek & South Branch Creek Tributary B.	None	+478	Township of Springfield.
	Approximately at confluence of South Branch Codorus Creek & Centerville Creek.	None	+529	
South Branch Codorus Creek	Approximately 3,200 feet downstream from Dam	None	+519	Township of Heidelberg.
	Approximately 1,300 feet downstream from Dam	None	+519	
Stony Run No. 1	Approximately 850 feet downstream of intersection of Andersontown Road and Brenneman Drive.	None	+375	Township of Fairview.
	Approximately at the intersection of Saw Mill Road and South Wharf Road.	None	+419	
Stony Run No. 3	Approximately 80 feet downstream of Beaver Lane	None	+344	Township of Warrington.
	Approximately 1,450 feet upstream of Beaver Lane	None	+344	
Susquehanna River	Approximately 3,000 feet East of Cooper Road	None	+112	Township of Peach Bottom.
	Approximately 800 feet upstream of Lay Road Access Road.	None	+113	
Tributary 1 (North Branch Bermudian Creek).	Approximately 450 feet upstream of Cabin Hollow Road.	None	+542	Township of Carroll.
	Approximately 1,300 feet downstream of Stony Run Road.	None	+571	
Tyler Run	Approximately 2,000 feet upstream of Tri-Hill Drive	None	+478	Township of Spring Garden.
	Approximately 2,450 feet upstream of Tri-Hill Drive	None	+486	

* National Geodetic Vertical Datum.

\# Depth in feet above ground.

\+ North American Vertical Datum.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

ADDRESSES

Borough of Dillsburg

Maps are available for inspection at Municipal Building, 151 South Baltimore Street, Dillsburg, PA.

Borough of Manchester

Maps are available for inspection at Municipal Building, 225 South Main Street, Manchester, PA.

Township of Carroll

Maps are available for inspection at Municipal Building, 555 Chestnut Grove Road, Dillsburg, PA.

Township of Conewago

Maps are available for inspection at Municipal Building, 490 Copenhaffer Road, York, PA.

Township of Dover

Maps are available for inspection at Municipal Building, 2480 Wet Canal Road, Dover, PA.

Township of East Manchester

Maps are available for inspection at Municipal Building, 5080 North Sherman Street Extended, Mount Wolf, PA.

Township of Fairview

Maps are available for inspection at Municipal Building, 599 Lewisberry Road, New Cumberland, PA.

Township of Fawn

Maps are available for inspection at Municipal Building, 245 Alum Rock Road, New Park, PA.

Township of Franklin

Maps are available for inspection at Municipal Building, 150 Century Lane, Dillsburg, PA.

Township of Heidelberg

Maps are available for inspection at Municipal Building, 6424 York Road, Spring Grove, PA 17331.

Township of Lower Chanceford

Maps are available for inspection at Municipal Building, 4120 Delta Road, Airville, PA.

Township of Lower Windsor

Maps are available for inspection at Township Office, 111 Walnut Valley Court, Wrightsville, PA 17368.

Township of North Codorus

Maps are available for inspection at Municipal Building, 1986 Stoverstown Road, Spring Grove, PA.

Township of North Hopewell

Maps are available for inspection at Municipal Building, 13081 High Point Road, Felton, PA.

Township of Peach Bottom

Maps are available for inspection at Municipal Building, 545 Broad Street Extended, Delta, PA.

Township of Shrewsbury

Maps are available for inspection at Municipal Building, 12341 Susquehanna Trail, Glen Rock, PA.

Township of Spring Garden

Maps are available for inspection at Administration Building, 558 Ogontz Street, York, PA.

Township of Springfield

Maps are available for inspection at Municipal Building, 9211 Susqehanna Trail South, Seven Valleys, PA.

Township of Warrington

Maps are available for inspection at Municipal Building, 3345 Rosstown Road, Wellsville, PA.

Township of Windsor

Maps are available for inspection at Municipal Building, 1480 Windsor Road, Red Lion, PA 17356.

Anderson County, Texas, and Incorporated Areas

Bassett Creek	Approximately 2,828 Feet downstream from the Intersection of Bassett Road and Bassett Creek.	None	+322	Unincorporated Areas of Anderson County.
	Approximately 1,619 Feet downstream from the Intersection of Bassett Road and Bassett Creek.	None	+326	
Wells Creek	Approximately 1,829 feet downstream from the confluence of Wells Creek, Wells Creek Northwest, and Wells Creek Tributary South.	None	+374	Unincorporated Areas of Anderson County.
	Approximately 373 feet downstream from North Loop 256.	None	+374	
	Approximately 1,020 feet downstream from Moody Street.	None	+381	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
\# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Anderson County

Maps are available for inspection at County Courthouse, 500 North Church Street, Palestine, TX 75801.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: October 31, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–26709 Filed 11–7–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 04–347; FCC 08–237]

Petition of South Slope for Classification as an Incumbent Local Exchange Carrier in the Oxford, Tiffin and Solon, IA Exchanges; Section 251(h)(2)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (Commission) seeks comment on whether South Slope Cooperative Telephone Company, Inc. (South Slope) should be treated as an incumbent local exchange carrier (LEC) for purposes of section 251 of the Communications Act of 1934, as amended, (Communications Act or Act) in the Iowa exchanges of Oxford, Tiffin and Solon as provided for in section 251(h)(2) of the Act. The Commission also requests comment on the appropriate regulatory treatment of South Slope and Iowa Telecommunications Services, Inc. (Iowa Telecom), the legacy incumbent LEC in those exchanges pursuant to section 251 of the Act, if the Commission concludes that South Slope should be accorded incumbent LEC treatment in the Oxford, Tiffin and Solon exchanges.

DATES: Comments are due on or before December 10, 2008. Reply comments are due on or before December 31, 2008.

ADDRESSES: You may submit comments, identified by WC Docket No. 04–347, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Parties choosing to file by paper must file an original and four copies of each filing in WC Docket No. 07–38. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's mail contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo, Wireline Competition Bureau, Competition Policy Division, (202) 418–0940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in WC Docket No. 04–347, adopted on October 7, 2008, and released on October 10, 2008. The complete text of this Notice of Proposed Rulemaking is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *http://www.fcc.gov.* Alternative formats are available for persons with disabilities by contacting the Consumer and Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at *fcc504@fcc.gov.* The complete text of the decision may be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or e-mail at *fcc@bcpiweb.com.*

Synopsis of Further Notice of Proposed Rulemaking

1. In 2004, South Slope, a cooperative telephone company providing service in Iowa, filed a petition requesting that it be treated as an incumbent LEC in the Iowa exchanges of Oxford, Tiffin and

Solon. In 2001, South Slope began to construct facilities in these three exchanges where Iowa Telecom is currently the incumbent LEC. South Slope estimates that it now serves approximately 90 percent of the subscribers in these three exchanges.

2. In the NPRM, the Commission seeks comment on whether South Slope should be treated as an incumbent LEC for purposes of section 251 of the Communications Act in the Iowa exchanges of Oxford, Tiffin and Solon as provided for in section 251(h)(2) of the Act. The Commission also requests comment on the appropriate regulatory treatment of South Slope and Iowa Telecom, the legacy incumbent LEC in those exchanges pursuant to section 251(h)(1) of the Act, if the Commission concludes that South Slope should be accorded incumbent LEC treatment in the Oxford, Tiffin and Solon exchanges.

3. Section 251(h)(1) of the Act defines an incumbent LEC as a local exchange carrier that, on the date of enactment of the Telecommunications Act of 1996, provided local exchange service in an area and was either a member of the National Exchange Carrier Association (NECA), or became a successor or assign of such a LEC. Section 251(h)(2) provides that the Commission may provide by rule for the treatment of a LEC as an incumbent LEC for the purposes of section 251 if a three-part test is satisfied. Specifically, in order to find that a LEC should be treated as an incumbent LEC for purposes of section 251, the Commission must find that: (1) The LEC at issue occupies a market position within an area that is comparable to the position of a legacy incumbent LEC; (2) the LEC has ''substantially replaced'' the legacy incumbent LEC; and (3) the reclassification is consistent with the public interest, convenience and necessity and the purposes of section 251.

4. The Commission sought comment on whether South Slope satisfies the three-part test in section 251(h)(2) and should be treated as an incumbent LEC for purposes of section 251 in the Oxford, Tiffin and Solon exchanges. The Commission did not address the treatment of South Slope as an incumbent in these three exchanges for purposes of interstate access charges, federal universal service support, and other interstate purposes. The Commission stated that these issues would be addressed as appropriate in other proceedings, including any study area boundary waiver petition that South Slope may file with the Commission.

5. The Commission tentatively concluded that the Oxford, Tiffin and Solon exchanges are the relevant area for analyzing South Slope's market position. The Commission also tentatively concluded that South Slope occupies a market position in this area that is comparable to that occupied by a legacy incumbent LEC in light of its extensive facilities build-out and estimate that it now provides local exchange service to approximately 90 percent of the subscribers in these exchanges over its own facilities. The Commission sought comment on these tentative conclusions.

6. In light of South Slope's estimate that it serves approximately 90 percent of the subscribers in the Oxford, Tiffin and Solon exchanges over its own facilities, the Commission tentatively concluded that South Slope has substantially replaced Iowa Telecom as the local exchange service provider in these exchanges. The Commissions sought comment on this tentative conclusion.

7. The Commission also sought comment on whether the treatment of South Slope as an incumbent LEC for purposes of section 251 in the Oxford, Tiffin and Solon exchanges would satisfy the public interest standard.

8. The Commission has previously found that the Act does not automatically convert the legacy incumbent LEC into a competitive LEC when another LEC is designated as an incumbent LEC in a particular area under section 251(h)(2). Instead, the Commission concluded that the elimination of unnecessary regulation is appropriately addressed through the removal of dominant carrier regulation and forbearance under section 10 of the Act.

9. The Commission tentatively concluded that Iowa Telecom should be given non-dominant regulatory treatment for interstate purposes in the Oxford, Tiffin and Solon exchanges if South Slope is accorded incumbent LEC status for purposes of section 251. The Commission sought comment on this tentative conclusion. The Commission also stated that Iowa Telecom may request additional deregulation in the Oxford, Tiffin and Solon exchanges by filing a formal petition for forbearance consistent with the Commission's rules.

10. The Commission sought comment on whether it should address, in this proceeding, the long-term regulation of South Slope's interstate operations in the Oxford, Tiffin and Solon exchanges if South Slope is accorded section 251(h)(2) incumbent LEC status. If the Commission addresses long-term regulation of South Slope's interstate operations in these exchanges in the current proceeding, it asked what regulations should apply to South Slope's interstate offerings. For example, the Commission asked whether South Slope should be regulated as a dominant carrier in these three exchanges if it is treated as a section 251(h)(2) incumbent LEC for purposes of section 251.

Ex Parte Presentations

11. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules as well.

Comment Filing Procedures

12. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this Notice of Proposed Rulemaking should refer to WC Docket No. 04–347. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's rulemaking Portal; or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS, *http://www.fcc.gov/cgb/ecfs* or the Federal eRulemaking Portal, *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
  - For ECFS filers, if multiple dockets or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the

following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- ○ The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- ○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- ○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

13. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY–B402, Washington, DC 20554, *via* telephone at (202) 488–5300, *via* facsimile at (202) 488–5563, or *via* e-mail at *FCC@BCPIWEB.COM.* The pleadings will also be available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and through the Commission's Electronic Comment Filing System (ECFS) accessible on the Commission's Web site, *http://www.fcc.gov/cgb/ecfs.*

14. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

15. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments also must comply with section 1.49 and all other applicable sections of the Commission's rules. All parties are encouraged to utilize a table of contents, and to include the name of the filing party and the date of the filing on each page of their submission.

16. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 CFR 0.461; 5 U.S.C. 552. The Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

Initial Paperwork Reduction Act of 1995 Analysis

17. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 47 U.S.C. 3506(c)(4).

Legal Basis

18. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i)–(j), 201, 203, 214, 251, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201, 203, 214, 251, 303(r).

Initial Regulatory Flexibility Analysis

19. In this NPRM, the Commission seeks comment on whether South Slope should be treated as an incumbent LEC for purposes of section 251of the Act in the Iowa exchanges of Oxford, Tiffin and Solon pursuant to section 251(h)(2) of the Act. The Commission also requests comment on the appropriate regulatory treatment of South Slope and Iowa Telecom, the legacy incumbent LEC in those exchanges, if the Commission concludes that South Slope should be accorded incumbent LEC treatment in these exchanges under section 251(h)(2) of the Act.

20. South Slope is a cooperative telephone company that provides local exchange service and exchange access service to approximately 19,500 access lines in the general vicinity of Cedar Rapids and Iowa City, Iowa. Iowa Telecom is the legacy incumbent LEC that serves the Oxford. Solon, and Tiffin, Iowa exchanges. Because the proposed rule affects only South Slope and Iowa Telecom, we find that any potential action in this proceeding would not affect a substantial number of small entities.

21. Therefore, we certify that the proposals in this NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities.

22. The Commission will send a copy of this NPRM, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

23. None.

Ordering Clauses

24. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i)–(j), 201, 203, 214, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201, 203, 214, 251, and 303(r), this NPRM is adopted.

25. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch

Secretary.

[FR Doc. E8–26813 Filed 11–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2333; MB Docket No. 08–196; RM–11487]

Radio Broadcasting Services; Marquez, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford, requesting the allotment of Channel 296A at Marquez, Texas. Channel 296A can be allotted to Marquez consistent with the minimum distance separation requirements of the Commission's Rules with the imposition of a site restriction located 13.6 kilometers (8.4 miles) west of the community at reference coordinates 31–14–20 NL and 96–23–45 WL.

DATES: Comments must be filed on or before December 15, 2008, and reply comments on or before December 30, 2008.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 3500 Maple Avenue #1320, Dallas, Texas 75219.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 08–196, adopted October 22, 2008, and released October 24, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via e-mail *http://www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Marquez, Channel 296A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–26741 Filed 11–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2332; MB Docket No. 08–201; RM–11478]

Radio Broadcasting Services; Williston, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Henry B. Shaffer, proposing to allot Channel 260A at Williston, South Carolina, as a second local service. Channel 220A can be allotted at Williston, South Carolina, with a site restriction of 3.1 kilometers (1.9 miles) northeast at coordinates 33–23–34 NL and 81–23–21 WL.

DATES: Comments must be filed on or before December 15, 2008, and reply comments on or before December 30, 2008.

ADDRESS: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows:

FOR FURTHER INFORMATION CONTACT: Victoria McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MB Docket No. 08–201, adopted October 22, 2008, and released October 24, 2008. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina is amended by adding Williston, Channel 260A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E8–26747 Filed 11–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2324; MB Docket No. 08–176; RM–11483]

Television Broadcasting Services; Atlantic City, NJ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission, at the request of petitioner ZGS Philadelphia, Inc. (''ZGS''), licensee of WWSI–DT, dismisses ZGS's pending Petition for Rulemaking to substitute DTV channel 10 for post-transition DTV channel 49 at Atlantic City, New Jersey.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order,* MB Docket No. 08–176, adopted October 20, 2008, and released October 21, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this *Order* to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), since this proposed rule is dismissed, herein.)

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–26744 Filed 11–7–08; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 73, No. 218

Monday, November 10, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–TM–08–0086; TM–08–10A]

Notice of Amendment to 2008 National Organic Certification Cost-Share Program

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Notice of Amended Funds Availability.

SUMMARY: On September 22, 2008, the Agricultural Marketing Service (AMS) published in the **Federal Register** (73 FR 54555), a Notice of Funds Availability inviting all States of the United States of America, its territories, the District of Columbia, and the Commonwealth of Puerto Rico, (collectively hereinafter called States) to submit an Application for Federal Assistance (Standard Form 424), and to enter into a cooperative agreement with AMS for the allocation of National Organic Certification Cost-Share Funds. This Notice informs that the National Organic Certification Cost-Share Program (Program) is being amended to provide cost-share assistance through participating States, to organic producers and handlers receiving certification or continuation of certification by a USDA-accredited certifying agent commencing October 1, 2007, rather than the originally announced October 1, 2008. To effectuate this amendment to the Program, AMS will issue amended cooperative agreements to participating States. Funding will be available for fiscal year 2008 (October 1, 2007, through September 30, 2008) in all States signing and returning an amended cooperative agreement. This action will make funds available to a greater number of eligible persons and achieve Congress' intent that use of National Organic Certification Cost-Share Funds begin with fiscal year 2008.

AMS has allocated a total of $22.0 million for the National Organic Certification Cost-Share Program commencing in fiscal year 2008. Funds are available under this Program to interested States to assist organic producers and handlers certified under the National Organic Program (NOP), as appropriate.

DATES: Interested states should submit a signed, amended cooperative agreement (provided by AMS) by December 26, 2008.

ADDRESSES: Amended cooperative agreements must be submitted to: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TMP/NOP, Room 4008—South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268; Telephone: (202) 720–3252; Fax: (202) 205–7808. Additional information may be found through the National Organic Program's homepage at *http://www.ams.usda.gov/nop*.

FOR FURTHER INFORMATION CONTACT: Robert Pooler, Agricultural Marketing Specialist, National Organic Program, USDA/AMS/TM/NOP, Room 4008—South, Ag Stop 0268, 1400 Independence Avenue, SW., Washington, DC 20250–0268; Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION: This Program is authorized under 7 U.S.C. 6523, as amended by section 10301 of the Food, Conservation and Energy Act of 2008 (Act). The Act authorizes the Department to provide certification cost share assistance to producers and handlers of organic agricultural products in all States. AMS has allocated $22 million for this program commencing in fiscal year 2008. The Program provides financial assistance to organic producers and handlers certified to the NOP. The NOP is authorized under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et seq.*).

On September 22, 2008, AMS published a Notice of Funds Availability in the **Federal Register** (73 FR 54555). That notice invited all States to submit an application and signed cooperative agreement to AMS by September 26, 2008.

This Notice informs that the Program is being amended to provide cost-share assistance through participating States, to organic producers and handlers receiving certification or continuation of certification by a USDA-accredited certifying agent commencing October 1, 2007, rather than the originally announced October 1, 2008. To effectuate this amendment to the Program, AMS will issue amended cooperative agreements to participating States. Funding will be available for fiscal year 2008 (October 1, 2007, through September 30, 2008) in all States signing and returning an amended cooperative agreement. This action will make funds available to a greater number of eligible persons and achieve Congress' intent that use of National Organic Certification Cost-Share Funds begin with fiscal year 2008.

Under the Act, payments are limited to 75 percent of an individual producer's or handler's certification costs up to a maximum of $750.00 per year.

However, for producers in the states of Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming cost share funding is available to these states under the Agricultural Management Assistance Organic Certification Cost-Share Program authorized under section 1524 of the Federal Crop Insurance Act, as amended, (7 U.S.C. 1501–1524). As provided in a Notice of Funds Availability published in the **Federal Register** on August 28, 2008 (73 FR 50756), eligible States had until September 15, 2008, to complete and return an application for federal assistance, along with the signed cooperative agreements. Information on this program can be found on the NOP's homepage at *http://www.ams.usda.gov/nop*.

Authority: 7 U.S.C. 6523.

Dated: November 4, 2008.

James E. Link,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–26661 Filed 11–7–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Agricultural Research Service's (ARS's) intention to request an extension of a currently approved information collection, Information Collection For Document Delivery Services at the National Agricultural Library (NAL), that expires March 31, 2009.

DATES: Comments must be submitted on or before January 14, 2009.

ADDRESSES: Send comments to: ARS–NAL, Collection Services Branch, 10301 Baltimore Ave., Room 300, Beltsville, Maryland 20705–2351.

FOR FURTHER INFORMATION CONTACT: Wayne Thompson, Access Services Librarian, telephone: 301–504–6503; fax: 301–504–7593; e-mail: *access@nal.usda.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Information Collection For Document Delivery Services.

OMB Number: 0518–0027.

Expiration Date of Approval: March 31, 2009.

Type of Request: To extend a currently approved information collection.

Abstract: In its role as both a preeminent agricultural research library and a National Library of the United States, NAL (part of the Department of Agriculture's Agricultural Research Service) provides loans and photocopies of materials from its collections to libraries and other institutions and organizations. NAL follows applicable copyright laws and interlibrary loan guidelines, standards, codes, and practices when providing loans and photocopies and charges a fee, if applicable, for this service. To request a loan or photocopy, institutions must provide a written request to NAL using either NAL's Web-based online request system or an interlibrary loan request system such as the Online Computer Library Center (OCLC) or the National Library of Medicine's Docline. Information provided in these requests include the name, address, and telephone number of the party requesting the material, and depending on the method of delivery of the material to the party, may include either a fax number, e-mail address, or Ariel IP address. The requestor must also provide a statement acknowledging copyright compliance, bibliographic information for the material they are requesting, and the maximum dollar amount they are willing to pay for the material. The collected information is used to deliver the material to the requesting party, bill for and track payment of applicable fees, monitor the return to NAL of loaned material, identify and locate the requested material in NAL collections, and determine whether the requesting party consents to the fees charged by NAL.

Estimate of Burden: Average 1.00 minute per response.

Description of Respondents: Respondents to the collection of information are those libraries, institutions, or organizations that request interlibrary loans or copies of material in the NAL collections. Each respondent must furnish the information for each loan or copying request.

Estimated Number of Respondents: 1525.

Frequency of Responses: Average 11 per respondent.

Estimated Total Annual Burden on Respondents: 280 hours.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments may be sent to Wayne Thompson at the address listed above within 65 days after date of publication. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 22, 2008.

Antoinette A. Betschart,

Associate Administrator, ARS.

[FR Doc. E8–26662 Filed 11–7–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fee Schedule for Linear Rights-of-Way Authorized on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice of Adoption of Mandatory Right-of-Way Land Use Fee Schedule.

SUMMARY: The Forest Service is hereby adopting the Bureau of Land Management (BLM)'s revised linear right-of-way fee schedule in 43 CFR 2806.20 for linear rights-of-way authorized on National Forest System (NFS) lands under Title V of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1761–1771, and Section 28 of the Mineral Leasing Act (MLA), 30 U.S.C. 185, as required by Section 367, Subtitle F, Title III, of the Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 685 (August 8, 2005). Additionally, the Forest Service is adopting this fee schedule for linear rights-of-way authorized on NFS lands under other statutes.

DATES: The revised linear right-of-way fee schedule applies to linear rights-of-way on NFS lands on December 1, 2008.

FOR FURTHER INFORMATION CONTACT: Glen Parker, (202) 205–1196, or Julett Denton, (202) 205–1256.

SUPPLEMENTARY INFORMATION:

Like BLM, the Forest Service is required to charge fees based on market value for the commercial use and occupancy of lands under its jurisdiction, including use and occupancy for linear rights-of-way for facilities such as power lines, fiber optic lines, pipelines, roads, and ditches. Both agencies authorize these uses under Title V of FLPMA and Section 28 of the MLA. Since 1987, the two agencies have shared a fee schedule for rights-of-way across the lands they manage. This joint fee schedule established eight fee zones based on the distribution of average land values by county in each state, except Alaska and Hawaii, and Puerto Rico.

In 2005, Congress enacted the Energy Policy Act. Under section 367 of the Energy Policy Act, BLM is solely responsible for the linear right-of-way fee schedule used by the two agencies. Section 367, entitled "Fair Market Value

Determinations for Linear Rights-of-Way Across Public Lands and National Forests,'' directs the Secretary of the Interior to (1) update 43 CFR 2806.20, which contains the per-acre fee schedule for linear rights-of-way on public lands managed by BLM; and (2) revise the per-acre fee zone value schedule by state, county, and type of linear right-of-way uses to reflect current values of land in each zone. Section 367 also directs the Secretary of Agriculture to adopt the revisions to BLM's linear right-of-way fee schedule for linear rights-of-way granted, issued, or renewed on NFS lands under Title V of FLPMA or Section 28 of the MLA.

Accordingly, the Forest Service gave notice in the preamble to BLM's proposed and final rules updating and revising BLM's linear right-of-way fee schedule per section 367 (72 FR 70376; December 11, 2007; 73 FR 65040; October 31, 2008) that the Forest Service will adopt the fee schedule. In addition, the Forest Service is hereby giving notice of its adoption of the revisions to BLM's linear right-of-way fee schedule. Although not statutorily required, the Forest Service is adopting BLM's revised fee schedule for all linear rights-of-way authorized on NFS lands, including those authorized under statutes other than FLPMA and the MLA, such as the Forest Service's Organic Act, 16 U.S.C. 551, and Section 7 of the Granger-Thye Act, 16 U.S.C. 580d.

Dated: November 11, 2008.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. E8–26631 Filed 11–7–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service, an agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Programs, hereinafter referred to Rural Development and/or the Agency, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by January 9, 2009.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, SW., STOP 1522, Room 5818 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that Rural Development is submitting to OMB for approval.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, SW., STOP 1522, Room 5818 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720–8435.

Title: 7 CFR 1728, Electric Standards and Specifications for Materials and Construction.

OMB Control Number: 0572–0131.

Type of Request: Extension of a currently approved collection.

Abstract: Rural Development makes loans and loan guarantees in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, (RE Act). Section 4 of the RE Act requires that the Agency make or guarantee a loan only if there is reasonable assurance that the loan, together with all outstanding loans and obligations of the borrower, will be repaid in full within the time agreed. In order to facilitate the programmatic interests of the RE Act, and, in order to assure that loans made or guaranteed by the Agency are adequately secure, Rural Development, as a secured lender, has established certain standards and specifications for materials, equipment, and the construction of electric systems. The use of standards and specifications for materials, equipment and construction units helps assure the Agency that: (1) Appropriate standards and specifications are maintained; (2) Rural Development loan security is not adversely affected; and (3) loan and loan guarantee funds are used effectively and for the intended purposes. 7 CFR 1728 establishes Agency policy that materials and equipment purchased by Agency electric borrowers or accepted as contractor-furnished material must conform to Agency standards and specifications where they have been established and, if included in Rural Development IP 202–1, ''List of Materials Acceptable for Use on Systems of Agency Electrification Borrowers'' (List of Materials), must be selected from that list or must have received technical acceptance from Rural Development.

Estimate of Burden: This collection of information is estimated to average 2.32 hours per response.

Respondents: Businesses or other for profits.

Estimated Number of Respondents: 38.

Estimated Number of Responses per Respondent: 2.30.

Estimated Total Annual Burden on Respondents: 1,760 hours.

Copies of this information collection can be obtained from Gale Richardson, Program Development and Regulatory Analysis, at (202) 720–0992. FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 4, 2008.

James R. Newby,

Acting Administrator, Rural Utilities Service.

[FR Doc. E8–26653 Filed 11–7–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No.: 0810151367–81368–01]

Solicitation of Applications for the National Technical Assistance, Training, Research and Evaluation Program: Economic Development Research Project: Regional Innovation Systems

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice to extend application closing date.

SUMMARY: The Economic Development Administration (EDA) publishes this notice to extend the closing date for the submission of applications for a regional innovation systems research project under FY 2009 National Technical Assistance, Training, Research and Evaluation program (NTA Program) funding.

DATES: The new closing date and time for receipt of electronic and paper applications for funding a regional innovation systems research project under FY 2009 NTA Program funding is Monday, December 1, 2008, at 5 p.m. Eastern Time.

ADDRESSES: Applications may be submitted in two formats: (i) In paper format at the addresses provided below; or (ii) electronically in accordance with the procedures provided on *http://www.Grants.gov* or via e-mail. The content of the application is the same for paper submissions as it is for electronic submissions. EDA will not accept facsimile transmissions of applications.

Paper Submissions: Applicants should submit paper submissions (via postal mail, overnight delivery or hand-delivery) to: FY 2009 Economic Development Research Project Competition: Regional Innovation Systems, Kerstin Millius, Program Analyst, Economic Development Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 7009, Washington, DC 20230.

Applicants are advised that, due to mail security measures, EDA's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery. Applicants may wish to use a guaranteed overnight delivery service.

Electronic Submissions: Applicants may submit completed applications electronically in accordance with the instructions provided at *http://www.Grants.gov*. On *http://www.grants.gov/search/basic.do*, applicants can perform a ''Basic Search'' for this grant opportunity by completing the ''Keyword Search;'' the ''Search by Funding Opportunity Number;'' or the ''Search by CFDA Number'' field, and then clicking the ''Search'' button. The Funding Opportunity Number for this grant opportunity is EDA10312008RESEARCH and the CFDA number is 11.312.

EDA strongly encourages that applicants not wait until the application closing date to begin the application process through *http://www.Grants.gov*.

Applicants should access the following link for assistance in navigating *http://www.Grants.gov* and for a list of useful resources: *http://www.grants.gov/applicants/applicant_help.jsp*. If you do not find an answer to your question under Frequently Asked Questions, try consulting the Applicant's User Guide. If you still cannot find an answer to your question, contact *http://www.Grants.gov* via e-mail at *support@grants.gov* or telephone at 1.800.518.4726. The hours of operation for *http://www.Grants.gov* are Monday-Friday, 7 a.m. to 9 p.m. Eastern Time (except for federal holidays). Applicants also may submit completed applications by e-mail to Kerstin Millius, Program Analyst, at *kmillius@eda.doc.gov*. The preferred file format for electronic attachments when submitting by either electronic submission method is portable document format (PDF); however, EDA will accept electronic files in Microsoft Word, WordPerfect, or Microsoft Excel formats. For a copy of the FFO announcement for this request for applications, please see the Web site listed below under ''Electronic Access.''

FOR FURTHER INFORMATION: For additional information or for a paper copy of the FFO announcement, please contact Kerstin Millius, Program Analyst, via e-mail at *kmillius@eda.doc.gov* (preferred) or by telephone at (202) 482–3280.

EDA's Internet Web site at *http://www.eda.gov* also contains additional information on EDA and its programs, including the NTA Program.

SUPPLEMENTARY INFORMATION: On October 31, 2008, EDA published in the **Federal Register** (73 FR 64909) the original notice and request for applications regarding the regional innovation systems research project competition under FY 2009 NTA Program funding. The original deadline for receipt of applications was November 17, 2008, at 5 p.m. Eastern Time. Upon review of the original closing date, EDA realized that it allowed a relatively short window of time for applicants to submit a complete application. To ensure that applicants have ample time to submit applications, EDA is extending the deadline under this competitive solicitation. The new deadline for receipt of electronic and paper applications is December 1, 2008, at 5 p.m. Eastern Time. All applications that are submitted by December 1, 2008, at 5 p.m. Eastern Time will be considered timely. All other information and requirements for the regional innovation systems research project competition under FY 2009 NTA Program funding remain as stated in the October 31, 2008 **Federal Register** notice and request for applications (73 FR 64909).

Electronic Access: The FFO announcement for the regional innovation systems research project competition under FY 2009 NTA Program funding is available at *http://www.Grants.gov*. Additional information is available through EDA's Internet Web site at *http://www.eda.gov*.

(Catalog of Federal Domestic Assistance (CFDA) Number: 11.312, Economic Development—Research and Evaluation)

Dated: November 5, 2008.

Otto Barry Bird,

Chief Counsel, Economic Development Administration.

[FR Doc. E8–26705 Filed 11–7–08; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

List of Petitions Received by EDA for Certification of Eligibility to Apply for Trade Adjustment

10/1/2008 through 10/31/2008

Firm	Address	Date accepted for filing	Products
CCI Enterprises, Inc.	5285 SE Mallard Way, Milwaukie, OR 97222.	10/27/2008	Brake cable assemblies for heavy truck air brake systems.
Woodcraft Industries, Inc.	253 Benner Pike, State College, PA 16801.	10/28/2008	Unfinished furniture in various species of wood, styles and categories.
Norco Industries, Inc.	365 W. Victoria St., Compton, CA 90220	10/29/2008	Industrial components and devices, specializing in jacks for RVs.
Infinite Graphics Incorporated	4611 East Lake Street, Minneapolis, MN 55406–2305.	10/17/2008	Precise digitally photo-plotted plates, film and masks used for printed circuit, and other manufacturing.
West Point Foundry and Machine Co., Inc..	2021 Stateline Road, West Point, GA 31833.	10/21/2008	Textile machinery.
K.B. Pizza Company, Inc.	191 Howard Street, Franklin, PA 16323	10/8/2008	Pizza, pizza dough and crust.
Gulf Packing Co.	P.O. Box 357, San Benito, TX 78586	10/22/2008	Processed uncooked beef for human consumption.
Roper Whitney of Rockford Inc	2833 Huffman Blvd, Rockford, IL 61103–3990.	10/27/2008	Sheet metal fabricating machinery.
Seiler Plastics Corp.	9727 Green Park Industrial, St. Louis, MO 63123–7241.	10/27/2008	Plastic extrusions, tubing, sheet products and thermoforming.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: November 4, 2008.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E8–26693 Filed 11–7–08; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–469–814)

Chlorinated Isocyanurates from Spain: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 10, 2008.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0780.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 2008, the Department of Commerce (''the Department'') published the preliminary results of the antidumping duty administrative review of chlorinated isocyanurates from Spain, covering the period June 1, 2006, through May 31, 2007. *See Chlorinated Isocyanurates from Spain: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 39650 (July 10, 2008).

Extension of Time Limits for Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), and 19 CFR 351.213(h)(1), the Department shall issue the final results of an administrative review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. *See* section 751(a)(3)(A) of the Act and19 CFR 351.213(h)(1). However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 120–day period to 180 days.

The Department finds that it is not practicable to complete the review within the original time frame due to further analysis that is required in this case. In particular, the Department needs additional time to examine the parties' arguments regarding Aragonesas Industrias y Energia S.A.'s (''Aragonesas'') reported levels of trade, and the allocation of certain expenses reported by Aragonesas. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the deadline for the final results of review to 153 days from the date on which the notice of the preliminary results was published. The final results will now be due no later than December 10, 2008.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 3, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–26730 Filed 11–7–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–868)

Folding Metal Tables and Chairs from the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 10, 2008.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2007, the Department of Commerce (''Department'') published the initiation of the administrative review of the antidumping duty order on folding metal tables and chairs from the People's Republic of China (''PRC''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 41057 (July 26, 2007). On July 14, 2008, the Department published the preliminary results of review. *See Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke in Part*, 73 FR 40285 (July 14, 2008). This review covers the period June 1, 2006, through May 31, 2007.

Extension of Time Limit for Final Results of Review

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), the Department shall make a final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results is published. The Act further provides, however, that the Department may extend that 120–day period to 180 days after the preliminary results if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the final results of the administrative review of folding metal tables and chairs from the PRC within the 120–day time limit due to complex issues the parties have raised related to revocation and surrogate financial statements. We find that additional time is needed to complete these final results. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the final results of this review, which is currently due on November 11, 2008, by 30 days to 150 days after the date on which the preliminary results was published. Therefore, the final results are now due no later than December 11, 2008.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 4, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–26732 Filed 11–7–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–841, A–570–924, A–520–803]

Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC), the Department is issuing antidumping duty orders on polyethylene terephthalate film, sheet, and strip (PET Film) from Brazil, the People's Republic of China (PRC), and the United Arab Emirates (UAE). On October 31, 2008, the ITC notified the Department of its determination that the U.S. industry is threatened with material injury. *See PET Film from Brazil, the PRC, and the UAE* (Investigation Nos. 731–TA–1131–1134 (Final), USITC Publication 4040, October 2008). In addition, the Department is amending the final dumping margins for the UAE.

DATES: Effective Date: November 10, 2008.

FOR FURTHER INFORMATION CONTACT: Mike Heaney (Brazil), Scot Fullerton (PRC), or Douglas Kirby (UAE), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4475, (202) 482–1386, or (202) 482–3782, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2008, the Department published its final determinations of sales at less than fair value in the antidumping duty investigations of PET Film from Brazil, the PRC, and the UAE. *See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Brazil,* 73 FR 55035 (September 24, 2008); *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008); and *Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value,* 73 FR 55036 (September 24, 2008) *(UAE Final Determination).*

Also, on September 24, 2008, Flex Middle East FZE (Flex UAE), respondent in the UAE investigation, timely alleged ministerial errors in the *UAE Final Determination. See* ''Amendment to the UAE Final Determination'' section below.

On October 31, 2008, the ITC notified the Department of its final determination pursuant to section 735(b)(1)(A)(ii) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is threatened with material injury by reason of less than fair value imports of subject merchandise from Brazil, the PRC, and the UAE. *See* letter from the ITC to the Secretary of Commerce, ''Notification of Final Affirmative Determination of Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Brazil, the People's Republic of China (PRC), and the United Arab Emirates (UAE) (Investigation Nos. 701–TA–452, 731–TA–1129, 731–TA–1130),'' dated October 31, 2008. Pursuant to section 736(a) of the Act, the Department is publishing antidumping duty orders on the subject merchandise.

Scope of the Orders

The products covered by each of these orders are all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Amendment to the UAE Final Determination

As noted above, on September 24, 2008, Flex UAE, the sole respondent in the UAE investigation, timely alleged ministerial errors in the *UAE Final Determination.* After examining Flex UAE's allegations, the Department determined that there were two ministerial errors. The Department's consideration of Flex UAE's allegations and correction of the ministerial errors are presented in the Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6: ''Ministerial Error Allegations—Final Determination of Sales at Less Than Fair Value of Polyethylene Terephthalate Film, Sheet and Strip (PET Film) from the United Arab Emirates: Flex Middle East FZE (Flex UAE),'' dated October 14, 2008, available in the public file in the Central Records Unit (CRU), Room 117, of the Main Commerce Building.

As a result of correcting for these ministerial errors, we are amending the *UAE Final Determination* with respect to Flex UAE. The amended weighted-average dumping margin for Flex UAE has changed from 4.80 percent to 4.05 percent. As Flex UAE's margin was the basis for the all others rate, we are also amending the all others rate to 4.05 percent.

Antidumping Duty Orders

On October 31, 2008, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that the industry in the United States producing PET Film is threatened with material injury within the meaning of section 735(b)(1)(A)(ii) of the Act by reason of imports of subject merchandise at less than fair value from Brazil, the PRC, and the UAE. In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further information from the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all relevant entries of PET Film from Brazil, the PRC, and the UAE.

Pursuant to section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury, other than threat of material injury described in section 736(b)(1) of the Act. Section 736(b)(1) states that ''{i}f the Commission, in its final determination under section 735(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 733(d)(2) would have led to a finding of material injury, then entries of the subject merchandise, the liquidation of which has been suspended under section 733(d)(2), shall be subject to the imposition of antidumping duties under section 731.'' In addition, section 736(b)(2) of the Act requires CBP to release any bond or other security, and refund any cash deposit made of estimated antidumping duties posted since the Department's preliminary antidumping duty determinations. Because the ITC's final determinations in these cases is based on the threat of material injury and is not accompanied by a finding that injury would have resulted, but for the imposition of suspension of liquidation of entries since the Department's preliminary determinations, section 736(b)(2) of the Act is applicable. Therefore, the Department will direct CBP to assess, upon further information from the Department, antidumping duties on all unliquidated shipments of PET Film from Brazil, the PRC, and the UAE entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register** .

Cash Deposit Requirements

Effective on the date of publication of the ITC's notice of final determination in the **Federal Register** , CBP will require, at the same time as importers would deposit estimated normal customs duties on this merchandise, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping margins listed below. *See* section 736(a)(3) of the Act. The all others rates or PRC-wide rate, as applicable, apply to all producers or exporters not specifically listed.

BRAZIL

Manufacturer/exporter	Weighted-average margin (percent)
Terphane Inc.	44.36
All Others	28.72

THE PEOPLE'S REPUBLIC OF CHINA

Exporter	Producer	Weighted-average margin (percent)
DuPont Teijin Films China Ltd.	DuPont Hongji Films Foshan Co. Ltd.	3.49
DuPont Teijin Films China Ltd.	DuPont Teijin Hongji Films Ningbo Co., Ltd.	3.49
Fuwei Films (Shandong) Co., Ltd.	Fuwei Films (Shandong) Co., Ltd.	3.49
Shaoxing Xiangyu Green Packing Co., Ltd	Shaoxing Xiangyu Green Packing Co., Ltd	3.49
Sichuan Dongfang Insulating Material Co., Ltd	Sichuan Dongfang Insulating Material Co. Ltd	3.49
Tianjin Wanhua Co., Ltd.	Tianjin Wanhua Co., Ltd.	3.49
Shanghai Uchem Co., Ltd.	Sichuam Dongfang Insulating Material Co., Ltd	3.49
Shanghai Uchem Co., Ltd.	Shanghai Xishu Electric Material Co., Ltd	3.49
PRC-wide Entity (including Jiangyin Jinzhongda New Material Co., Ltd.).		76.72

THE UNITED ARAB EMIRATES

Manufacturer/exporter	Weighted-average margin (percent)
Flex Middle East FZE	4.05
All others	4.05

Termination of Suspension of Liquidation

The Department will also instruct CBP to terminate the suspension of liquidation for entries of PET Film from Brazil, the PRC, and the UAE entered, or withdrawn from warehouse, for consumption prior to the publication of the ITC's notice of final determination, and refund any cash deposits made and release any bonds posted between the publication of the Department's preliminary determinations on May 5, 2008, and the publication of the ITC's final determinations in the **Federal Register**.

This notice constitutes the antidumping duty orders with respect to PET Film from Brazil, the PRC, and the UAE, pursuant to section 736(a) of the Act. Interested parties may contact the Department's CRU, Room 1117 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders and amended determination are issued and published in accordance with sections 736(a), 735(e), and 777(i)(1) of the Act and 19 CFR 351.211(b).

Dated: November 5, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–26802 Filed 11–6–08; 11:15 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Protected Areas Federal Advisory Committee; Public Meeting

AGENCY: National Ocean Service, NOAA, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a meeting of the Marine Protected Areas Federal Advisory Committee (Committee) in Monterey, California.

DATES: The meeting will be held Tuesday, November 18, 2008, from 8:30 a.m. to 5 p.m., Wednesday, November 19, from 8:30 a.m. to 5 p.m., and Thursday, November 20, from 8:30 a.m. to 12:30 p.m. These times and the agenda topics described below are subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

ADDRESSES: The meeting will be held at the Monterey Bay Plaza Hotel, 400 Cannery Row, Monterey, California.

FOR FURTHER INFORMATION CONTACT: Lauren Wenzel, Designated Federal Officer, MPA FAC, National Marine Protected Areas Center, 1305 East West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–3100 x136, Fax: 301–713–3110); e-mail: *lauren.wenzel@noaa.gov;* or visit the National MPA Center Web site at *http://www.mpa.gov*).

SUPPLEMENTARY INFORMATION: The Committee, composed of external, knowledgeable representatives of stakeholder groups, was established by the Department of Commerce (DOC) to provide advice to the Secretaries of Commerce and the Interior on implementation of Section 4 of Executive Order 13158 on MPAs. The meeting will be open to public participation from 4:15 p.m. to 5 p.m. on Tuesday, November 18, 2008, and from 8:35 a.m. to 9:30 a.m. on Thursday, November 20, 2008. In general, each individual or group will be limited to a total time of five (5) minutes. If members of the public wish to submit written statements, they should be submitted to the Designated Federal Official by November 14, 2008.

Matters to be Considered: The Committee will hear a panel presentation and discussion on ocean observations and marine protected areas, and will consider draft reports and recommendations from the Scientific and Technical Subcommittee and the Review and Evaluation Subcommittee. It will also hold elections for the position of chair and vice chair, and will hear presentations on the development of the national system of marine protected areas, including the nomination and gap analysis processes. Committee members and the public are also invited to attend a ceremony to mark the launch of the national system of marine protected areas. The Agenda is subject to change, and the latest version will be posted at *http://www.mpa.gov.*

Dated: November 4, 2008.

Christopher C. Cartwright,

CFO/CAO, NOAA's National Ocean Service.

[FR Doc. E8–26811 Filed 11–7–08; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ24

Small Takes of Marine Mammals Incidental to Specified Activities; Low-Energy Marine Geophysical Survey in the Santa Barbara Channel, November 2008

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Scripps Institute of Oceanography (SIO), for the take of marine mammals, by Level B harassment only, incidental to conducting a marine seismic survey in the Santa Barbara Channel, California, during November 2008.

DATES: Effective November 1, 2008, through November 31, 2008.

ADDRESSES: A copy of the IHA and the application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly or Howard Goldstein, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA and 16 U.S.C. section 1362(18) defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either approve or deny the authorization.

Summary of Request

On June 27, 2008, NMFS received an application from SIO for the taking, by Level B harassment only, of small numbers of 16 species of marine mammals incidental to conducting a twelve day, low-energy marine seismic survey within the Santa Barbara Channel, CA, in November 2008. The funding for this research survey is provided by the National Science Foundation (NSF). The purpose of the research program is described in NMFS' notice of the proposed IHA (73 FR 50760, August 28, 2008).

Description of the Activity

The planned survey will involve one source vessel, the seismic ship R/V *Melville*, owned by the U.S. Navy and operated by SIO. The *Melville* is expected to depart San Diego and spend approximately 12 days conducting the survey and piston coring activities in November 2008. At three deeper-water sites outside state waters, a small 45–in^3 GI airgun will be used, but will likely be reduced to 25 or 35 in^3. At two shallow-water sites that cross into California state waters, a 1.5–kJ electromechanical boomer or a 2–kJ electric sparker system will be used, depending on water depth and seafloor conditions, and depending on which source provides the highest resolution and best sub- seafloor signal penetration. The two systems will not operate concurrently and, in general, the boomer source likely will be preferred. As the boomer, sparker, or GI airgun are towed along the survey lines, a towed 72–channel, 450 m hydrophone streamer will receive the returning acoustic signals and transfer the data to the on-board processing system. All survey operations will take place in less than or equal to 1000 m water depth.

In addition to the GI airgun, sparker, and boomer, a towed chirp system, a multibeam echosounder (MBES), and a sub-bottom profiler (SBP) will be used at various times during the cruise. The chirp system will be used in tandem with the seismic sources, or will be used separately to locate optimal piston core sites, up to 4 hours at a time to a maximum of 8 10 hours per day. A 3.5–kHz SBP will be used to help verify seafloor conditions at possible coring sites, and will also be used in tandem with a MBES during transit to and from the Santa Barbara Channel area to collect additional seafloor bathymetric data. A more detailed description of the authorized action, including vessel and acoustic source specifications, is detailed in the proposed IHA notice (73 FR 50760, August 28, 2008).

Safety Radii

NMFS has established a 160dB re 1 μPa_{rms} behavioral harassment (Level B) threshold for both cetaceans and pinnipeds and a 190dB and 180 dB re 1 μPa_{rms} threshold for the potential onset of injury (Level A) for pinnipeds and cetaceans, respectively. Corresponding harassment and safety isopleths have been modeled for both shallow and deep water by Lamont-Doherty Earth Observatory of Columbia University (L-DEO) for a number of airgun configurations, including the size used during the SIO survey, 45 in^3 (Table 1). Airgun operations will occur only in depths of 100–1000 m; therefore the 12 m, 35 m, and 330 m radii are applicable.

TABLE 1. DISTANCES TO WHICH SOUND LEVELS ≥190, 180, AND 160 DB RE 1 μPa_{rms} COULD BE RECEIVED FROM THE 45–IN^3 GI AIRGUN THAT WILL BE USED DURING THE SEISMIC SURVEYS IN THE SANTA BARBARA CHANNEL IN NOVEMBER 2008. DISTANCES ARE BASED ON MODEL RESULTS PROVIDED BY L-DEO.

Water Depth	Estimated Distances (m) at Received Levels		
	190 dB	180 dB	160 dB
>1000 m	8	23	220
100–1000 m	12	35	330

The boomer's source level is higher than that of the mini sparker thus the propagation distances for the boomer will be used for both types of sources. Received sound levels from the boomer to be used in this study (source level 209 dB) in shallow water have not been modeled or measured. However, Burgess and Lawson (2001) measured received sound levels from a boomer with a source level of 203 dB re 1 μPa_{rms} in water depths 12–14 m, and Greene (2006) measured received sound levels from a boomer with a source level of 188.8 dB re 1 μPa_{rms} in water depths 37–48 m, both in the Alaskan Beaufort Sea. Based on the spherical spreading model, distances to which sound levels ≥190, 180, and 160 dB re 1 μPa_{rms} could be received from the boomer are 9, 28, and 280, respectively (Table 2).

TABLE 2. DISTANCES TO WHICH RECEIVED SOUND LEVELS ≥190, 180, AND 160 DB RE 1 μPA_{rms} WERE MEASURED FOR TWO BOOMERS IN THE ALASKAN BEAUFORT SEA, AND DISTANCES PREDICTED BY A SPHERICAL SPREADING MODEL FOR THOSE SOURCES AND FOR THE BOOMER TO BE USED IN THE PROPOSED SURVEYS.

Boomer source level (dB re 1 micro Pa)	Estimated Distance (m) at Received Levels		
	190 dB	180 dB	160 dB
203 (measured)	< 1	2	22
203 (modeled)	4.5	16	140
188.8 (measured)	0.9	2.3	14.6
188.8 (modeled)	1	2.7	27.5
209 (this survey, modeled)	9	28	280

Comments and Responses

A notice of receipt of SIO's application and proposed IHA was published in the **Federal Register** on August 28, 2008 (73 FR 50760). During the 30–day comment period, NMFS received comments from the Marine Mammal Commission (MMC). Following are the comments from the MMC and NMFS' responses.

Comment 1: The MMC recommends that the applicant be required to conduct all practicable monitoring and mitigation measures that reasonably can be expected to protect the potentially affected marine mammal species from serious injury.

Response: NMFS agrees with this recommendation and has required the applicant to conduct all practicable monitoring and mitigation measures that can reasonably be expected to protect affected marine mammal species from serious injury. The IHA requires that marine mammal visual observers (MMVOs) on the *Melville* make observations for 30 minutes prior to all seismic source operations and record the following information when a marine mammal is sighted: (i) species, group size, and age/size/sex categories (if determinable); behavior when first sighted and after initial sighting; heading (if consistent), bearing, and distance from seismic vessel; sighting cue; apparent reaction to the seismic source or vessel (e.g., none, avoidance, approach, paralleling, etc.); and behavioral pace; and

(ii) time, location, heading, speed, sea state, visibility, and sun glare- these data will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

The IHA also requires sufficient mitigation requirements, implemented by the NMFS approved MMVOs, to ensure that no marine mammal is killed or experiences serious injury, including mandatory shut downs and delay of operations (e.g., mandatory shut down if a marine mammal is seen within or approaching the safety radius). See Mitigation section (below) for a complete list of mitigation requirements under this IHA.

Comment 2: The MMC recommends that operations be suspended immediately, pending review by NMFS, if a dead or seriously injured marine mammal is found in the vicinity of the operations and the death or injury could have occurred incidental to the seismic survey.

Response: NMFS agrees with this recommendation. The IHA does not authorize Level A harassment to marine mammals (i.e., serious injury or mortality). In addition, a condition is included in the IHA which state that in the unanticipated event that any cases of marine mammal injury or mortality in the vicinity of the seismic operations are judged to result from these activities, SIO will cease operating seismic sources and report the incident to the Office of Protected Resources, NMFS, immediately. Seismic operations will then be postponed until NMFS is able to review the circumstances and work with SIO to determine whether modifications in the activities are appropriate and necessary.

Description of Marine Mammals in the Activity Area

A total of 32 marine mammal species are known to or may occur in the Santa Barbara Channel, including 18 odontocete species (dolphins and toothed whales), 8 mysticete species (baleen whales), 6 pinniped species (seals and sea lions), and the sea otter. Seven of the species that may occur in the project area are listed as endangered under the U.S. Endangered Species Act (ESA): the Pacific right, blue, humpback, sei, fin, and sperm whale and the Steller sea lion. The sea otter is under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and therefore is not considered further in this analysis. SIO requested and has been authorized to take 16 of the 32 marine mammals based on likelihood of encountering these species. This likelihood factor took into account temporal, spatial, and abundance data of each species, harassment radii, and specifics of the survey (e.g., survey design, seismic source specifications, etc.). The remaining 15 species under NMFS jurisdiction are not expected to be encountered during the survey and are not authorized to be taken.

Species authorized to be harassed, their habitat and abundance in the project area, and the authorized take levels are outlined in Table 3. Additional information regarding the status and distribution of the marine mammals in the area and how the densities were calculated was included in the notice of the proposed IHA (73 FR 50760, August 28, 2007) and may be found in SIO's application.

TABLE 3. NUMBER OF ANIMALS AUTHORIZED TO BE TAKEN, BY SPECIES, IN THE IHA. CORRESPONDING HABITAT AND ABUNDANCE OF EACH SPECIES IS ALSO LISTED.

Species	Habitat	Abundance	Authorized Take
Humpback whale	Mainly nearshore waters and banks	>6000	2
Fin whale	Slope, mostly pelagic	13,620–18,680	2
Blue whale	Pelagic and coastal	1186	2
Sperm whale	Usually deep pelagic	24,000	8
Pygmy sperm whale	Deep waters off shelf	N.A.	9
Cuvier's beaked whale	Slope and pelagic	20,000	1
Offshore bottlenose dolphin	Offshore, slope, shelf	3257	3
Coastal bottlenose dolphin	Within 1 km of shore	323	
Striped dolphin	Off continental shelf	1,824,000	1
Short-beaked common dolphin	Shelf, pelagic, high relief	487,622	591
Long-beaked common dolphin	Coastal, high relief	1893	76
Pacific white-sided dolphin	Offshore, slope	931,000	14
Northern right whale dolphin	Slope, offshore waters	15,305	7
Risso's dolphin	Shelf, slope, seamounts	12,093	8
Dall's porpoise	Shelf, slope, offshore	57,549	4
California sea lion	Coastal, shelf	238,000	87
Harbor seal	Coastal	34,233	20

Potential Effects on Marine Mammals

The effects of sounds from airguns might include one or more of the following: avoidance, tolerance, masking of natural sounds, behavioral disturbances, and at least in theory, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2004; Nowacek *et al.*, 2007). However, for this survey, it is unlikely there would be any cases of hearing impairment or any significant non-auditory physical or physiological effects given the small size of the seismic sources and mitigation. Also, behavioral disturbance is expected to be limited to relatively short distances.

SIO's application and NMFS' notice of the proposed IHA (73 FR 50760, August 28, 2007) included a detailed discussion of the potential effects of sounds from the single airgun, boomer, and sparker on mysticetes, odontocetes, and pinnipeds, including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. Additional information on the behavioral reactions (or lack thereof) by marine mammals to seismic vessels can be found in SIO's application and in Appendix A of the accompanying EA.

The notice of the proposed IHA also included a discussion of the potential effects of the MBES and SBP. Because of the narrow beam of the echosounder, directionality, and short pulse duration, NMFS believes it unlikely that marine mammals will be exposed to sound levels at or above those that have the potential to cause harassment from these sources. Further detail on impacts from these sources may be found in the proposed **Federal Register** notice and SIO's application.

Estimated Take by Incidental Harassment

SIO's application and the notice of the proposed IHA (73 FR 50760, August 28, 2008) included an in-depth discussion of the methods used to calculate the densities of the marine mammals in the area of the seismic survey and the take estimates. A summary is included here.

All anticipated takes authorized by this IHA are Level B harassment only. Take calculations were based on maximum exposure estimates (based on maximum density estimates) vs. best estimates and are based on the 160–dB Level B harassment isopleth. Harassment distances for the airgun are from a full sized chamber; however, the applicant has indicated that most likely the chamber size will be reduced to 25 in^3. In addition, the sparker has a lower source level than the boomer. Regardless, isopleth distances from the boomer will be used while the sparker is operating. Given these considerations, the predicted number of marine mammals that might be exposed to sounds at or above 160 dB is likely an overestimate.

Numbers of animals authorized to be taken, by species, is outlined in Table 3. When compared to population estimates for each stock, take numbers for each species are considered small. For example, blue whale population abundance in the action area is 1,186 individuals and the applicant is requesting two animals to be taken. A complete list of abundance estimates for each species in outlined in Table 3 in the application.

Potential Effects on Habitat

A detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates, was included in the notice of the proposed IHA (73 FR 50760, August 28, 2007) and can also be found in SIO's application and appendices in the accompanying EA. While impacts to fish and other marine mammal prey may occur, this is expected to be negligible given the short duration of the survey (approximately 12 days) and that a single low-energy airgun is being used. Seismic sound does not impact physical or chemical characteristics of the habitat (e.g., water temperature, nutrient availability, salinity). Therefore, the authorized operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations or stocks.

Monitoring

Vessel-based Visual Monitoring

Vessel-based marine mammal visual observers (MMVOs) will be based on board the seismic source vessel, and they will watch for marine mammals and turtles near the vessel during seismic operations. MMVOs will also watch for marine mammals and turtles near the seismic vessel for at least 30 minutes prior to the start of seismic operations and after an extended shutdown. When feasible, MMVOs will also make observations during daytime periods when the seismic system is not operating for comparison of animal abundance and behavior. Based on MMVO observations, the seismic sources will be shut down when marine mammals are observed within or about to enter the designating safety zones.

Reporting

MMVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document any apparent disturbance reactions or lack thereof. Data will be used to estimate the numbers of mammals potentially ''taken'' by harassment. They will also provide information needed to order a shutdown of the airgun, boomer, or sparker when marine mammals are within or near the corresponding safety radii. When a sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc. and including responses to ramp-up), and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state or ramp-up, power-down, or full power), sea state, visibility, cloud cover, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables. A final report will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring and will summarize the dates and locations of seismic operations, all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential ''take'' of marine mammals by harassment or in other ways. More information on reporting requirements can be found in the proposed IHA **Federal Register** notice.

Mitigation

Mitigation and monitoring measures implemented for the *Melville* cruise have been developed and refined during previous seismic surveys funded by NSF. The mitigation and monitoring measures described herein represent a combination of the procedures required by past IHAs for other similar projects and on recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007). The measures are described in detail below.

Mitigation measures include (1) vessel speed or course alteration, provided that doing so will not compromise operational safety requirements, (2) GI-airgun, boomer, or sparker shut down when a marine mammal is within or approaching the designated safety zones, and (3) delay starting seismic operations if a marine mammal is sighted within or approaching the safety zone; and (4) shut down at any range in the unlikely event that a North Pacific right whale is sighted. Two other standard mitigation measures airgun array power down and airgun array ramp up are not possible because only one, low-volume GI airgun, boomer, or sparker will be used for the surveys. Finally, avoidance of airgun operations over or near steep slopes or submarine canyons has become a standard mitigation measure, as these are places where beaked whales tend to concentrate. However, no such bathymetric features exist in the study area; therefore, this mitigation measure is not applicable to these surveys.

Speed or Course Alteration

If a marine mammal is detected outside the safety zone but is likely to enter it based on relative movement of the vessel and the animal, then the vessel speed and/or course will be adjusted in the safest manner allowable to minimize the likelihood of the animal entering that zone. Major course and speed adjustments are often impractical when towing long seismic streamers and large source arrays, but, in this case, because only one small source and a short (450–m) streamer will be used, this mitigation measure is practicable to enforce.

In addition, if concentrations of beaked whales are observed just prior to or during the airgun, boomer, or sparker operations, those operations will be moved to another location based on recommendations by the on-duty MMVO aboard the *Melville*.

Shut-down and Delay Requirements and Procedures

If a marine mammal is detected outside the exclusion zones but is likely to enter the exclusion zone, and if the vessel's speed and/or course cannot be changed to avoid having the animal enter the exclusion zone, the seismic source will be shut down before the animal is within the exclusion zone. Likewise, if a mammal is already within the safety zone when first detected, the seismic source will be shut down immediately.

Following a shut down, seismic activity will not resume until the marine mammal or turtle has cleared the safety zone. In addition, if a marine mammal is sighted within or approaching the safety zone before seismic operations commence, a delay shall occur until that animal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it is visually observed to have left that zone; has not been seen within the zone for 15 min in the case of shallow diving odontocetes (i.e., dolphins, porpoise) and pinnipeds; or has not been seen within the zone for 30 min in the case of deeper diving cetaceans (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, and beaked whales).

In the unanticipated event that any cases of marine mammal injury or mortality are judged to result from these activities, SIO will cease operating seismic airgun operation and report theincident to the Office of Protected Resources, NMFS, and the Southwest

Regional Administrator, NMFS, immediately. Seismic operations will then be postponed until NMFS is able to review the circumstances and work with SIO to determine whether modifications in the activities are appropriate and necessary.

Endangered Species Act (ESA)

Pursuant to section 7 of the ESA, NSF has consulted with the NMFS, Office of Protected Resources, Endangered Species Division on this seismic survey. NMFS has also consulted internally pursuant to section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. NMFS has issued a Biological Opinion (BiOp), which concluded that the proposed action and issuance of an IHA are not likely to jeopardize the continued existence of blue, fin, humpback and sperm whales and green, leatherback, loggerhead, and olive ridley sea turtles. The BiOp also concluded that the proposed action would have no effect on critical habitat since none has been designated within the action area. An incidental take statement (ITS) has been issued for the take of blue, fin, humpback, and sperm whales and green, leatherback, loggerhead, and olive ridley sea turtles. Relevant Terms and Conditions of the ITS have been incorporated into the IHA.

National Environmental Policy Act (NEPA)

NSF prepared an Environmental Assessment of a Marine Geophysical Survey by the R/V *Melville* in the Santa Barbara Channel, November 2008. NMFS has adopted NSF's EA and issued a Finding of No Significant Impact for the issuance of the IHA.

Determinations

NMFS has determined that the impact of conducting a low-energy seismic survey in the Santa Barbara Channel in November may result, at worst, in a temporary modification in behavior (Level B Harassment) of small numbers of 14 species of cetaceans and 2 species of pinnipeds. This activity is expected to result in a negligible impact on the affected species or stocks. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this action.

This negligible impact determination is supported by: (1) the likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to it becoming potentially injurious; (2) during airgun use, marine mammals would have to be closer than 35 m (114 ft) in waters 100–1000 m (the water depth for this survey) from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; (3) during boomer or sparker use, marine mammals would have to be closer than 28 m (91 ft) from the vessel to be exposed to levels of sound (180 dB) believed to have even a minimal chance of causing TTS; (4) the likelihood that marine mammal detection ability by trained observers is good at those distances from the vessel; and (5) the incorporation of other required mitigation measures (i.e., shutdown and delay requirements, vessel course and speed alterations). As a result, no take by injury or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the required mitigation measures.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be a small percent of any of the estimated population sizes, and has been mitigated to ensure the least impact practicable through incorporation of the measures mentioned previously in this document. In addition, there will not be an unmitigable impact on subsistence uses because there are none in the action area.

Authorization

As a result of these determinations, NMFS has issued an IHA to SIO for conducting a marine geophysical survey in the Santa Barbara Channel, November 2008, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 4, 2008.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–26721 Filed 11–7–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent and Trademark Financial Transactions.

Form Number(s): PTO–2038, PTO–2231, PTO–2232, PTO–2233, PTO–2234, PTO–2236.

Agency Approval Number: 0651–0043.

Type of Request: Revision of a currently approved collection.

Burden: 49,795 hours annually.

Number of Respondents: 1,647,133 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public approximately two to six minutes (0.03 to 0.10 hours) to gather the necessary information, prepare the appropriate form or document, and submit the completed request.

Needs and Uses: Under 35 U.S.C. 41 and 15 U.S.C. 1113, as implemented in 37 CFR 1.16–1.28, 2.6–2.7, and 2.206–2.209, the USPTO charges fees for processing and other services related to patents, trademarks, and information products. Customers may submit payments to the USPTO by several methods, including credit card, deposit account, electronic funds transfer (EFT), and paper check transactions. The public uses this collection to pay patent and trademark fees by credit card, establish and manage USPTO deposit accounts, request refunds, and set up user profiles. The USPTO uses this collection to process credit card payments, handle deposit account requests, issue refunds, and provide user accounts for EFT and other financial transactions.

Affected Public: Individuals or households, businesses or other for-profits, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov*.

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *www.reginfo.gov*.

Paper copies can be obtained by:

• *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0043 Patent and Trademark Financial Transactions copy request'' in the subject line of the message.

• *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.

• *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services

Division, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before December 10, 2008 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A._Fraser@omb.eop.gov*, or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: November 3, 2008.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E8–26697 Filed 11–7–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR102–3.150, and in accordance with section 10(a)(2) of Public Law, the following meeting of the Defense Health Board is announced:

DATES: November 20, 2008 (9 a.m.–12 p.m. EST (Open Session)).

ADDRESSES: Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Colonel Roger L. Gibson, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–8448, EXT. 1228, Fax: (703) 681–3317, *roger.gibson@ha.osd.mil.* Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.* The public is encouraged to register for the meeting. If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–8448 ext. 1280 by November 12, 2008. Written statements may be mailed to the above address, e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to address pending issues before the Board and deliberate in open session the status of reports by subcommittees.

Agenda: On November 20, 2008 the Board will receive updates and deliberate upon the findings from the following Defense Health Board (DHB) subcommittees: Military Occupational & Environmental Health and Medical Surviellance Subcommitee, the DHB Review Panel for the Establishment of the Joint Pathology Center, DHB Review Panel on the Department of Defense Biological Defense Research Program, and the National Capital Region Base Realignment And Closure (NCR BRAC) Advisory Panel.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 the Defense Health Board invites members of the public to attend the meeting from 9 a.m. to 12 Noon Eastern Standard Time on November 20, 2008. As an alternative to being present at this meeting, the public may access the DHB Web site to view the slides presented in real time at this location: *http://www.health.mil/dhb/default.cfm* and listen to the audio by dialing the following toll-free phone number: 1–877–771–5191.

Any member of the public wishing to provide input to the Defense Health Board may submit a written statement in accordance with 41 CFR 102–3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should not be longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer at the address detailed above at any point. However, if the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Defense Health Board until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Defense Health Board Chairperson, and ensure they are provided to members of the Defense Health Board before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the Defense Health Board Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Defense Health Board.

Dated: November 3, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–26712 Filed 11–7–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Synthetic Stereoisomers of Hyperzine A for Protection Against Chemical Warfare Agents (CWA), CWA-Induced Seizures, and Other Neurological Seizures

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/104,388 entitled ''Synthetic Stereoisomers of Hyperzine A for Protection Against Chemical Warfare Agents (CWA), CWA-Induced Seizures, and other Neurological Seizures,'' filed October 10, 2008. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention comprises pre and/or post exposure treatment of a patient with [+]-Huperzine A for chemical warfare nerve agent or organophosphate induced seizure/status epilepticus and neuropathology.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–26719 Filed 11–7–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Medical Tube Securing Device

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/102,910 entitled ''Medical Tube Securing Device,'' filed October 6, 2008. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates generally to a novel device for securing medical tubes and catheters intubated within a patient.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–26715 Filed 11–7–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974, as Amended; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice of Renewal of the Computer Matching Program between the U.S. Department of Education and the U.S. Department of Veterans Affairs.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), the Office of Management and Budget (OMB) *Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988,* 54 FR 25818 (June 19, 1989), and OMB Circular A–130, Appendix I, notice is hereby given of the renewal of the computer matching program between the U.S. Department of Education (ED) (the recipient agency) and the U.S. Department of Veterans Affairs (VA) (the source agency). After the ED and VA Data Integrity Boards approve a new computer matching agreement (CMA), the computer matching program will begin on the effective date as specified in the CMA and as indicated in paragraph 5 of this notice.

In accordance with the Privacy Act and applicable OMB guidance, the following information is provided:

1. *Names of Participating Agencies.*

The U.S. Department of Education and the U.S. Department of Veterans Affairs.

2. *Purpose of the Match.*

The purpose of this matching program between ED and VA is to verify the veteran's status of applicants for financial assistance under Title IV of the Higher Education Act of 1965, as amended, (HEA), who claim to be veterans.

The Secretary of Education is authorized by the HEA to administer the Title IV programs and to enforce the terms and conditions of the HEA.

Section 480(c)(1) of the HEA defines the term ''veteran'' to mean ''any individual who (A) has engaged in the active duty in the United States Army, Navy, Air Force, Marines, or Coast Guard; and (B) was released under a condition other than dishonorable.'' (20 U.S.C. 1087vv(c)(1)). Under section 480(d)(1)(D) of the HEA, an applicant who is a veteran (as defined in section 480(c)(1)) is considered an independent student for purposes of Title IV, HEA program assistance eligibility, and therefore does not have to provide parental income and asset information to apply for Title IV, HEA program assistance. (20 U.S.C. 1087vv(d)(1)(D)).

3. *Authority for Conducting the Matching Program.*

ED is authorized to participate in the matching program under sections 480(c) and 480(d)(1)(D) of the HEA (20 U.S.C. 1087vv(c)(1) and (d)(1)(D)). VA is authorized to participate in the matching program under 38 U.S.C. 523.

4. *Categories of Records and Individuals Covered by the Match.*

ED will provide the Social Security number and other identifying information of each applicant who indicates that he or she is a veteran. This information will be disclosed from the Federal Student Aid Application File system of records (18–11–01), which was published in the **Federal Register** (see 64 FR 30106, 30159 (June 4, 1999), as amended by 64 FR 72383, 72407 (December 27, 1999), and corrected by 65 FR 11294 (March 2, 2000) and 66 FR 18758 (April 11, 2001)). ED will disclose this information to VA pursuant to routine use no. 16, as added by the notice correcting this system of records published on April 11, 2001 (66 FR 18758). The ED data will be matched against data in the Veterans and Beneficiaries Identification and Records Location Subsystem-VA (38VA21) system of records, consistent with routine use no. 21, as added to that system of records by a notice published in the **Federal Register** on June 4, 2001 (66 FR 30049–50).

5. *Effective Dates of the Matching Program.*

The matching program will be effective on the last of the following dates: (1) December 24, 2008, the day after the expiration of the current computer matching agreement; (2) thirty (30) days after notice of the matching program described in the CMA has been published in the **Federal Register**; or (3) forty (40) days after a report concerning the matching program has been transmitted to OMB and transmitted to Congress along with a copy of the CMA, unless OMB waives 10 days of this 40-day period for compelling reasons shown, in which case 30 days after transmission of the report to OMB and Congress. The matching program will continue for 18 months after the effective date of the CMA and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

6. *Address for Receipt of Public Comments or Inquiries.*

Individuals wishing to comment on this matching program or obtain additional information about the program, including requesting a copy of the CMA between ED and VA, should contact Ms. Marya Dennis, Management and Program Analyst, U.S. Department of Education, 63G2 Union Center Plaza, 830 First Street, NE., Washington, DC 20202. Telephone: (202) 377–3385. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) toll free at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to the Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and Code of Federal Regulations is available on GPO access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: November 5, 2008.

James F. Manning,

Acting Chief, Operating Officer, Federal Student Aid.

[FR Doc. E8–26720 Filed 11–7–08; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA State plan previously submitted by Rhode Island.

DATE: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual State at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA State plans filed by the fifty States, the District of Columbia and the Territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that States, Territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA section 254(a)(11) through (13). HAVA sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is Rhode Island's first revision to its State plan.

The revised State plan from Rhode Island accounts for the use of Fiscal Year 2008 requirements payments. In accordance with HAVA section 254(a)(12), the State plan submitted for publication provides information on how the State succeeded in carrying out its previous State plan. The State confirms that these changes to its State plan were developed and submitted to public comment in accordance with HAVA sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from November 10, 2008, the State is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA section 254(a)(11)(C).

EAC wishes to acknowledge the effort that went into revising this State plan and encourages further public comment, in writing, to the State election official listed below.

Chief State Election Official

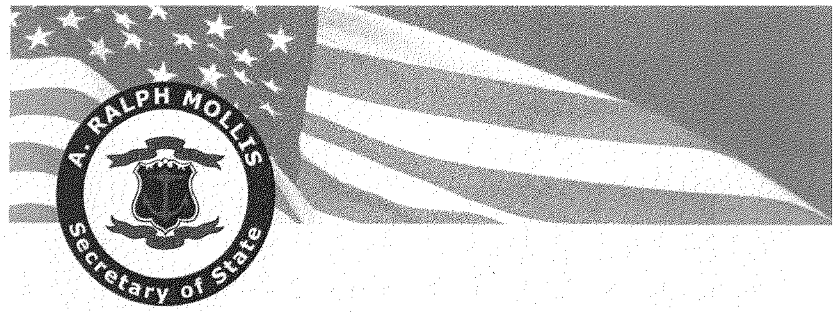
The Honorable A. Ralph Mollis, Secretary of State, 82 Smith Street, State House Room 217, Providence, RI 02903, Phone: (401) 222–2357, Fax: (401) 222–1356.

Thank you for your interest in improving the voting process in America.

Dated: October 28, 2008.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.



RHODE ISLAND STATE PLAN

HELP AMERICA VOTE ACT OF 2002 (HAVA)

FIRST REVISED AND UPDATED VERSION, 2008

A. Ralph Mollis
Secretary of State

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
Office of the Secretary of State

August 1, 2008

Dear Rhode Islander:

As Secretary of State, I am committed to making it easier to vote and restoring Rhode Island's faith in the fairness of our elections. I am pleased to present Rhode Island's Updated 2008 State Plan for continued enhancements to our state's voting system through the federal Help America Vote Act (HAVA). Congress passed HAVA in 2002, providing guidelines and funding to help states reform their elections and improve their voting systems.

Thanks to the work done by this office in recent years, Rhode Island's elections are among the most accessible, fair and accurate in the nation.

- Our **optical scan balloting** uses simple, easy-to-use ballots and provides fast and accurate automated vote counts as well as a crucial paper back-up system.
- New **accessible technology** in every polling place enables nearly every Rhode Islander to vote conveniently regardless of physical challenges.
- Our statewide **Centralized Voter Registration System** makes it simple to register and vote while ensuring the integrity of our voter rolls.

The major technical and legislative innovations in Rhode Island's original 2002 HAVA plan have now been fully implemented. You can see their impact in last March's presidential primary. More than 213,000 Rhode Islanders cast ballots – nearly three times the turnout of the last competitive presidential primary. The record turnout was a testament to the confidence voters have in our elections. The nearly flawless execution of the primary was a testament to the improvements that were made to the capacity of our systems.

The challenge now before us is to expand public participation in our strengthened electoral process. The steps outlined in the 2008 State Plan will help us achieve that goal.

Sincerely,
(electronic signatures)

A. Ralph Mollis
Secretary of State

Secretary of State A. Ralph Mollis

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INTRODUCTION

This 2008 State Plan is the first revision of the *Rhode Island State Plan, Help America Vote Act of 2002 (HAVA)*. This revision is largely a report of successful statewide implementation of the major reforms and enhancements of voting law and process required by Congress in the wake of controversial problems with key local elections during the Presidential election of 2000.

The individual chapters of this plan and the summary tables in the appendices beginning on page 41 show and when Rhode Island met most of the key HAVA requirements and what we are now doing or will do to ensure permanent compliance.

But one critical measure of successful elections – the rate of voter participation – still requires considerable improvement across the United States and here in Rhode Island.. Future resources and efforts under HAVA will be focused on bringing more eligible Rhode Island citizens to register and vote.

Background on HAVA

In 2002, the United States Congress, with broad bipartisan support, passed landmark election reform legislation known as HAVA. This historic legislation required states to reform numerous aspects of the way elections are run, and appropriated federal funding to help them meet these challenges. Secretary of State A. Ralph Mollis has posted a copy of this law at *www.state.ri.us/HAVA/*.

Rhode Island was a leader in election reform, long before the enactment of HAVA. Through the foresight of former Secretary of State and now U.S. Rep. Jim Langevin, Rhode Island put in place a unified, optical scan precinct count voting system for each of its 39 cities and towns that enables the state Board of Elections and our local boards of canvassers to conduct fair and accurate elections. Scanning technology makes counts fast and accurate. The use of paper ballots offers voters a simple and familiar way to vote and provides a reliable paper record of each vote. As a result, Rhode Island avoided the election problems experienced in other parts of the country during the 2000 and 2004 elections.

HAVA provided Rhode Island with a unique opportunity – and significant federal dollars – to realize elements of election system reform, which, until then, had been only a dream. Our original HAVA State Plan drew on the time and talents of 75 members of our HAVA Advisory Committee, which carefully assessed our state's current electoral practices and capacities against the HAVA requirements. The draft plan was publicly reviewed and discussed at meetings held throughout Rhode Island. The final plan was submitted in August 2003.

The Secretary of State shared statewide oversight and implementation responsibility with the Board of Elections. Boards of canvassers in each of our state's 39 cities and towns also played crucial roles.

HAVA implementation, 2003 to 2007

Between 2003 and 2007, Rhode Island successfully implemented all of the HAVA requirements, most notably, a central, statewide database of voter registrations and new systems to strengthen the integrity of the voting process while also ensuring that every eligible voter will be able to cast a vote.

By December 2004, we had developed and implemented a powerful election tool – a statewide, uniform, computerized, interactive, central voter registration list known as the **Central Voter Register System** (CVRS). By linking cities and towns into a statewide network, the CVRS allows Rhode Island to maintain a highly accurate, up-to-date voter registration list. The CVRS enables election officials to ensure that those who are eligible to vote are able to vote and those who are not eligible to vote do not. This system was completely deployed and operational in all 39 towns in December 2004.

To meet HAVA mandates, the Board of Elections also established and put into place a system for **new identification requirements for voters.** At the same time, new **provisional voting** rules enable individuals whose exact status or voting address is unclear to cast a vote which will be counted when and if their eligibility is established.

HAVA also mandates that Rhode Island provide voters who are physically challenged with accessible voting systems that provide the same opportunity for access, participation, privacy and independence afforded to other voters. As planned, every polling place in the state was equipped with an **accessible voting unit** by 2006.

All Rhode Islanders should be proud of the progress our state has made since our first HAVA State Plan was filed in 2003. Rhode Island has now met the requirements of the federal law.

These enhancements were made possible thanks to more than $17 million in federal HAVA funding through the end of 2007. But, they could not have been achieved without a statewide commitment to meet the requirements of HAVA within a few short years.

Our success resulted from the hard work and dedication of many partners: the Secretary of State, local boards of canvassers, the General Assembly, the Governor and State Officers, our political parties and voters. However, we must particularly credit the Board of Elections for drafting the legislation and regulations and conducting the training for local election officials and volunteers that translated this plan to reality.

With these essential systems in place, our state has met all of the HAVA requirements. We will now monitor, maintain and enhance our system to continue to meet and, where possible, exceed, HAVA requirements.

Improving the integrity of elections

Our primary attention now turns to the people who will use them, our **election officials**, our **poll workers** and **Rhode Island citizens**. We anticipate final HAVA funding of $575,000, plus $30,263 in state matching funds. Those resources will be dedicated to strengthening the Rhode Island electorate itself.

That work has already begun. Last year, Secretary of State Mollis appointed a ten-member Voters First Advisory Commission to review and reform the state's election laws. With testimony at five public hearings and deliberation at eleven public workshop sessions, the Commissioners developed thoroughly researched positions on nine specific issues. Several recommendations focused on the integrity of the process, including increased voting booth privacy, restrictions on political canvassing at polling places and cleaning up voter rolls. Other reforms promoted expanded access for citizens with early voting initiatives, uniform statewide polling hours and expanded opportunities to register to vote.

We will **improve training** for front-line workers – both **election officials and poll workers** -- who must be well versed in the new systems and procedures. New partnerships with businesses, schools and civic organizations will emerge to recruit a larger and more diverse pool of qualified poll workers, including people in high school and college. We have added a module to the CVRS that tracks poll workers so that they can be located and recruited for future elections.

The critical element underlying all of these changes is our commitment to increase **civic participation in elections**. While 682,344 Rhode Islanders were registered and eligible to vote in the 2006 election, only 57.5% exercised that right, meaning that nearly 290,000 failed to participate. The Board of Elections and the Secretary of State have jointly developed comprehensive voter education for youth and are bringing that curriculum to every high school and college in the state.

Rhode Island's future challenge will be to make the voting experience as important, accessible, secure and rewarding as possible for every voter.

SECTION 1: TITLE III REQUIREMENTS AND OTHER ACTIVITIES

How the State will use the requirements payment to meet the requirements of Title III, and, if applicable, under section 251(b)(2), to carry out other activities to improve the administration of elections. – HAVA §254 (a)(1)

1.1. VOTING SYSTEMS STANDARDS REQUIREMENTS – §301(A)

Deadline for compliance January 1, 2006: no waiver permitted.
Status as of 2008 FULLY MET

With great foresight, Rhode Island enacted legislation (Chapters 277 & 298 of Public Laws of 1996) that mandated the statewide use of a uniform, optical scan precinct count voting system. Since September 1998, this optical scan precinct count voting system (OpTech III-PE, "Eagle" voting system) has been in use for all elections at all polling places in the 39 cities and towns which make up the State of Rhode Island (the State).

The State's optical scan precinct count voting system already met most of the requirements under Section 301 of HAVA. Specifically:

- Voters can verify, in private, their selected votes on the ballot before their vote is cast and counted
- Voters can change their ballots or correct any error before the vote is cast and counted, including the opportunity to receive replacement ballots
- The optical scan system automatically notifies voters if they have selected more than one candidate for the same office, a warden/moderator informs them of the effect of their over-voting and the voters are given the opportunity to correct their errors before their votes are cast
- A permanent paper record with a manual audit capacity is produced and available for recount
- The system has the ability for an alternative language
- The error rate meets federal standards

In our HAVA planning, we fully assessed other voting equipment options, with particular attention to the Direct Recording Election (DRE) voting systems in use in many states. In the end, the State determined that the optical scan equipment in place was superior to DRE and should be retained.

Voting Instructions for Mail Ballots

Currently, the Secretary of State provides ballots and printed voter information to voters who vote by mail. The staff of the local boards of canvassers, the Board of Elections and the Secretary of State's Elections Division are available by phone to provide one-on-one information to mail voters.

Our biennial Voter Information Handbook has been updated to include new instructions to voters who vote by mail. The new instructions include information on the effect of casting multiple votes for the same office and how to correct a ballot before it is cast, including instructions on how to obtain a replacement ballot.

Uniform, Nondiscriminatory Standards for What Constitutes A Vote

In 2002, the Board of Elections adopted rules and regulations that defined what constituted a "vote" on the State's optical scan precinct count voting system. Those definitions were codified by Rhode Island General Law (RIGL) 17-19-1, which was passed by the Rhode Island General Assembly on July 7, 2004. In the now unlikely event that other voting systems are implemented, the Board of Elections will take the steps necessary to ensure that a uniform and nondiscriminatory definition of a "vote" is adopted in conformance with the requirements of HAVA.

Accessibility for Individuals with Disabilities - Equipment

HAVA requires that by January 1, 2006, the State must have had, in each polling place, at least one voting system that:

- Is accessible to individuals with disabilities
- Provides the same opportunity for access, participation, privacy and independence that is afforded to other voters

In 2002, the State enacted RIGL 17-19-8.2 directing the Secretary of State to acquire such an accessible system for every Rhode Island polling place. Upon assessment of available systems, the State used HAVA funding to acquire and install two "AutoMark" systems for every polling place in time for the 2006 election.

Automark works in conjunction with the State's existing optical scan system, actually marking a conventional paper ballot and thus maintaining the paper ballot trail that Rhode Islanders strongly prefer. The system provides a range of input options and accommodations for many voter needs, such as sip-puff tubes, audio activation, text enlargement and support for multiple languages. The system reads back and confirms the voter's choices before counting.

During the Automark system's first use in the 2006 election, blind persons experienced technical difficulties using the system in many polling places in Rhode Island and other states. We have added training for poll workers and technical retrofits of the equipment to address those problems for the 2008 election.

Accessibility for Individuals with Disabilities – Polling Places

Rhode Island General Laws require every polling place to be accessible to the disabled and elderly. With the implementation of the optical scan precinct count voting system in 1998, new efforts were made that resulted in all polling places meeting required polling place accessibility standards by November 2000.

Under HAVA, the U.S. Dept. of Health and Human Services (HHS) made grants available to the states to ensure full access for individuals with disabilities. These funds were awarded and accounted for separately from direct HAVA funding.

The Governor's Commission on Disabilities, as the official designee of the Chief State Election Official, prepared Rhode Island's State Grant for Election Assistance for Individuals with Disabilities (EAID) and secured federal grants of $100,000 each in the years 2003 through 2007 for a total of $500,000.

Information on activities below is taken from the HAVA EAID application for 2008.

To date, expenditures by category of allowable expenditure have been:

Category	1. Polling Place Access	2. Equal Opportunity	3. Train Election Officials	4. Information on Accessible Elections	Total Spent
Amount Spent	$107,423	$14,290	$5,391	$97,375	$224,479

Polling Place Access Expenditures:

- Assisted and will continue to assist local boards in choosing accessible sites and encouraging community-based providers of services to people with disabilities to offer their sites as polling places
- Surveyed and will continue to survey potential new polling sites on an as-needed basis to certify compliance with the HAVA accessibility guidelines
- Providing technical assistance in designing the removal of any barriers to access found at the polling sites
- Awarded and will continue to award grants to local boards of canvassers to fund accessibility renovations at polling places
- Monitored and will continue to monitor the renovations to ensure compliance with the U.S. Dept. of Justice's Americans With Disabilities Act Checklist for Polling Places, through either permanent renovations or temporary solutions for election days.

Equal Opportunity Allowable Expenditures:

- Continue funding the RI Disability Vote Project to:
  - Provide outreach about polling place accessibility, availability and opportunity to people with disabilities throughout the state

  - Conduct a public awareness campaign to help voting awareness among people with disabilities
  - Recruit and train people with disabilities to serve as poll workers
- Maintained and will continue to maintain the Election Assistance Committee of the Governor's Commission on Disabilities as an advisor to the Governor's Commission on Disabilities, the RI Disability Law Center, the Secretary of State and the Board of Elections' ongoing attempts to ensure polling site accessibility and greater participation by people with disabilities in the electoral process. The Committee includes representatives from the state Dept. of Administration (DOA), Office of Personnel Administration; National Federation of the Blind of RI; Opportunities Unlimited for People With Differing Abilities, Inc; state Dept. of Human Services, Office of Rehabilitation Services; the Secretary of State; RI Disability Law Center; Board of Elections; state Commission on the Deaf and Hard of Hearing; state Dept. of Human Services, Assistive Technology Access Partnership; CranstonArc and RI Disability Vote Project.

Train Election Officials Allowable Expenses

The Governor's Commission on Disabilities, the RI Disability Law Center and the Board of Elections developed a poll worker training video that will be used by the Board of Elections to train election officials and poll workers. If needed, FY 2008 EAID funds will be used to revise the training video to better prepare officials and workers to meet the needs of the diverse universe of voters including persons with disabilities.

Information on Accessible Elections Allowable Expenses

With FY 2008 EAID funding, the Governor's Commission on Disabilities and RI Disability Law Center will continue funding the RI Disability Vote Project to:

- Provide outreach about polling place accessibility, availability and opportunity to people with disabilities throughout the state
- Conduct a public awareness campaign to help voting awareness amongst people with disabilities
- Develop training modules to be used by consumer organizations and providers of services for people with disabilities to better prepare people with disabilities to vote independently and in secret
- Recruit and train people with disabilities to serve as poll workers

1.2. PROVISIONAL VOTING AND VOTING INFORMATION REQUIREMENTS -- §302

Deadline for compliance January 1, 2004; no waiver permitted.

Status as of 2008: FULLY MET

Provisional Voting

The intent of **provisional voting** is to ensure that no individual who goes to the polls intending to cast a ballot is turned away without having the opportunity to do so. Under HAVA, individuals who believe they are registered, but are not on the certified voting list must be allowed to vote using a provisional ballot. Once the appropriate state or local election official verifies that the individuals are eligible to vote under state law, the provisional ballots are counted. The state or local election official must also create a free access system which allows individuals who cast provisional ballots to verify whether their votes were counted, and if not, the reason they were not counted.

Rhode Island now meets HAVA requirements for provisional voting.

During its 2003 session, the Rhode Island General Assembly adopted RIGL 17-19-24.1 to bring the State into compliance with HAVA §302 requirements. This legislation instructs the Board of Elections to promulgate the rules and regulations for Provisional Voting in accordance with HAVA. The Board of Elections adopted appropriate regulations on August 23, 2006 and re-filed them on January 3, 2007. The Board of Elections is in the process of updating them again in 2008.

Board of Elections regulations provide that provisional votes shall be held in sealed envelopes pending verification of the voter's registration via the CVRS, which accurately registers and records the disposition of the vote (fully counted, partly counted or disallowed). The Board of Elections enables voters to view the disposition of their ballots at *www.ri.gov/election/provisional_ballots/*.

Voting Information Requirements

At the time HAVA was enacted in 2002, Rhode Island law already met most of the HAVA §302 provisions. The State currently meets all of the requirements for providing voter information.

The Board of Elections packages and delivers election supplies for each voting district to local election officials. Information on state and federal laws on voter fraud and misrepresentation is posted in all polling places on Election Day. The public is also notified of the date, time and location of polling places in advance of all elections, either through postings in public places or postings in the local newspaper. Outside each polling place is a clearly marked sign, conspicuous and visible from the street, indicating the location of the polling place.

Information on all new procedures, such as provisional voting or access to Automark voting machines is also posted. Information is made available to the public through the *How to Register and Vote* guide and the *Voter Information Handbook* updated and re-issued by mail to every registered voter before every election. Complete registration and voting information is also posted at *www.elections.state.ri.us*.

1.3. COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS AND REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL – §303

Status as of 2008: FULLY MET

RIGL 17-9.1-6 mandates the State to *"administer a single and unified system of voter registration in accordance with all state and federal laws which shall enable duly registered voters to vote in all elections in their respective voting districts including elections for federal office."* All new systems implemented to bring Rhode Island into compliance with HAVA requirements will ensure the continuation of a single and uniform voter registration system for in-person and mail registration as well as for all federal, state and local elections.

Computerized Statewide Voter Registration List

For Rhode Island, the HAVA offered opportunity to implement a computerized, uniform, centralized, interactive, statewide voter registration database. For years Rhode Island had recognized the need for this system, but until the passage of HAVA, the State did not have the resources to create the uniform, centralized CVRS to enable election officials to ensure that those who are eligible to vote are able to vote and that those who are not eligible to vote do not.

Prior to HAVA, all official voter registration records were maintained at the local level. While the Secretary of State maintained a central list of all persons registered to vote in Rhode Island, this list was not immediately and electronically available to the local boards of canvassers or other statewide and local election officials. In 2002, the State adopted RIGL 17-6-1.2, directing the Secretary of State to create a CVRS in anticipation of the opportunity HAVA would create.

With the authorization of HAVA funding, the Secretary of State immediately began the procurement process for a computerized statewide voter records system.

The specifications for Rhode Island's CVRS were developed by a task force of users and election officials. The Board of Elections and members of the public formed the technical review committee. The State was granted a two-year extension of the original HAVA deadline of Jan. 1, 2004. However, by December 2004, the system was in place.

Today, thanks to HAVA and the efforts of state officials:

- Rhode Island has a single, uniform, official, centralized, interactive computerized statewide voter registration list – the CVRS – defined, maintained and administered at the state level
- The CVRS is now the official voter registration list for the conduct of all federal, state and local elections
- The CVRS contains the name and registration information of every legally registered voter
- Every legally registered voter has been assigned a unique identifier for the CVRS
- The CVRS is the single system for storing and managing the official list of registered voters throughout the state
- The CVRS is coordinated with the state Division of Motor Vehicles (DMV) database and will soon be coordinated with other state agency databases
- Election officials have immediate access to the information contained in the CVRS
- Local election officials update all voter registration information in the CVRS on an expedited basis
- The State provides support as needed so that local election officials are able to enter information and produce voter registration lists when needed
- Maintenance is performed on this computerized list on a regular basis:
    - Ineligible voters are removed in accordance with the National Voter Registration Act
    - In accordance with RIGL, the State works in partnership with the state Dept. of Corrections (DOC) to remove from the voting lists felons who are serving time in prison for felony convictions. In addition, the State works in partnership with the DOC and the state and federal judiciaries to make voter registration available to felons upon their releases from prison, even if on probation or parole
    - The State is in the process of coordinating with agencies that record vital statistics for death records to remove deceased voters
    - List maintenance ensures that the name of each registered voter appears on the computerized list
    - Only individuals who are not registered or who are not eligible to vote are removed from the computerized list
    - Duplicate names are eliminated from the computerized list
- State and local election officials have now provided adequate technological security measures to prevent unauthorized access to the computerized list
- The CVRS includes provisions to ensure that voter registration records are accurate and updated regularly, including:
    - A system of file maintenance that removes registrants who are ineligible to vote, i.e. in accordance with the National Voter Registration Act (NVRA),

those individuals who have not responded to a notice and have not voted in two consecutive federal elections
    - Safeguards to insure that eligible voters are not removed in error
    - Voter registration information is verified in accordance with HAVA requirements

The Secretary of State has provided local boards of canvassers with all hardware, software and training that they need to participate in the CVRS. The Secretary of State has also provided the Board of Elections, other state agencies and the public access to the CVRS database as appropriate, in accordance with State law and subject to the applicable privacy provisions for the *HAVA-Mandated Identifier* (see next section).

The Secretary of State has also further enhanced the electoral process with additional modules related to the CVRS. These include the immediate electronic transmittal and statewide access to:

- Voter registrations completed at the Division of Motor Vehicles
- Mail ballot processing
- Maintenance of all polling places
- Maintenance of nomination and candidate records
- Street file
- Voter history, including name and address change and redistricting

Special Provisions for Voter Registration Information

HAVA mandates that an application for voter registration for any election for federal office may not be accepted or processed by the State unless the application includes at least one of the following forms of ID:

- The voter's valid driver's license number, if the voter has a driver's license
- For those voters who do not have a current and valid driver's license, the last 4 digits of the voter's social security number (SSN)
- A unique identifier assigned by the CVRS in those cases where the voter does not have either a valid driver's license or a SSN

To meet this requirement, the CVRS maintains two unique numbers for every registered voter in Rhode Island:

- A *State Voter Identification Number*, automatically assigned by the system, which will be part of the public record
- A *HAVA-Mandated Identifier* (driver's license number, last four digits of SSN or unique identifier), which will be protected from public view

This allows the State to both verify the accuracy of information provided in accordance with Section 303 requirements and protect the privacy of personal information. State statutes were amended to ensure privacy protections for the HAVA-Mandated Identifier.

In order to verify the accuracy of the information provided on applications for voter registration, the Secretary of State and the DMV now match the information in the CRVS with information at the DMV.

The Social Security Administration (SSA) agreed to verify the accuracy of social security numbers, dates of birth and names provided with voter registrations through the DMV and to screen those individuals against the death records. Those procedures were in place in time for the pre-election statewide mailing to Rhode Island voters in March 2006.

As required by HAVA, the DMV is seeking an agreement with the SSA to verify the accuracy of information provided by DMV for those applications for voter registration on which the last four digits of a SSN were provided instead of a driver's license number. The information that will be verified includes:

- The name, date of birth and social security number of an individual given to the SSA to match the information on file with the SSA
- If such individual is shown on the records of the SSA as deceased

Changes to voter registration forms now must be reviewed by the Secretary of State to ensure compatibility with the CVRS and ongoing compliance with HAVA requirements.

Requirements for Voters Who Register by Mail

The mail-in voter registration process in Rhode Island now meets HAVA §303 requirements for voter identification or voter instructions. Beginning January 1, 2003, voters who register by mail who did not provided their driver's license number or SSN upon registering and have not previously voted in an election for federal office in the state must present identification either at the time of registration or at the time of first voting. The new first-time voter must present this identification either with the mail registration, at the polls on Election Day, or with the mail ballot if the voter chooses to vote by mail.

An individual will meet this requirement upon presenting either:

- A valid photo identification
- A copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter

Rhode Island will modify its mail registration and voter information to notify new voters of the identification requirements of HAVA. The CVRS will be designed to support and track compliance with HAVA identification requirements.

The State will modify the voter registration form and polling place voter qualification processes to allow for the verification of identification provided by first-time voters who were registered by mail.

To comply with HAVA requirements, the Board of Elections changed the mail registration form by the statutory deadline. These changes included adding:

- The question *"Are you a citizen of the United States of America?"* and boxes for the applicant to check which indicate whether the applicant is or is not a citizen
- The question *"Will you be 18 years of age on or before election day?"* and boxes for the applicant to check which indicate whether or not the applicant will be 18 years of age or older on election day
- The statement *"If you checked 'no' in response to either of these questions, do not complete this form."*
- A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required must be included in order to avoid additional identification requirements upon voting for the first time

1.4. Minimum Requirements – §304

The requirements laid out in HAVA are minimum requirements. The State may establish election technology and administrative requirements that are more stringent. Any more stringent requirement that the State imposes must comply with all Title III requirements, as well as the laws described in HAVA §906.

Since 1996, state law mandates uniformity in statewide voting systems and the administration of a single and unified system of voter registration in accordance with all state and federal laws. Therefore, Rhode Island legislation in these two areas could be considered more rigorous than HAVA. The State will continue to ensure uniformity in all State voting and voter registration systems for all federal, state and local elections. These uniform systems will be in full compliance with all HAVA requirements and with the relevant laws listed in HAVA §906.

1.5. Methods of Implementation Left to Discretion of State – §305

The State chose various means to comply with the requirements of HAVA Title III. Specific details on the implementation methodology chosen can be found in Sections 1.1. through 1.3 of this State Plan.

1.6. Adoption of Voluntary Guidance by Commission – §311

Once the federal Election Assistance Commission (EAC) has issued its voluntary recommendations with respect to Title III, the State will consider that guidance in updating the State Plan. The State welcomes this assistance and will incorporate those recommendations deemed appropriate into subsequent versions of the State Plan.

1.7. PROCESS FOR ADOPTION – §312

The State will stay aware of the progress of the EAC in developing the Title III recommendations. If appropriate, the State will provide feedback during the public comment period after the recommendations are published in the Federal Register and participate in public hearings regarding the recommendations.

1.8. OTHER ACTIVITIES – §251 (B)(2)

The State shall use HAVA requirements funding to meet Title III requirements. In the event that the State has completely implemented the requirements of Title III, future State Plans will be amended to include how requirements funding shall be used for other activities to improve the administration of elections for federal office in keeping with the conditions of this section.

SECTION 2. RHODE ISLAND'S DISTRIBUTION OF REQUIREMENTS PAYMENT

How the State will distribute and monitor the distribution of the requirements payments to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of:

> *(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment, and*
>
> *(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8). – HAVA §254 (a)(2)*

2.1 ELIGIBILITY OF LOCAL UNITS TO RECEIVE THE PAYMENT

In Rhode Island, the State is responsible for the procurement, maintenance, preparation, delivery and storage of all optical scan precinct count voting systems used by local boards of canvassers in all federal, state and local elections. The State is responsible for the administration of a single, uniform voter registration system for all in person and mail registrations and for all federal, state and local elections. This centralized system provides for improved efficiency of elections.

In keeping with these practices, the State will continue to use HAVA funds to:

- Provide services and materials to local boards of canvassers as needed to meet HAVA requirements
- Support other activities to improve the administration of elections as described in HAV

HAVA funds will be centrally managed by the Secretary of State to ensure compliance with HAVA requirements and the State fiscal control systems.

2.2 PERFORMANCE MEASURES FOR LOCAL UNITS

The State monitors HAVA funds in accordance with the statewide performance measures adopted under HAVA §254(a)(8) and as outlined in Section 8 of this State Plan. The Secretary of State will centrally manage the distribution of all funds appropriated to the Rhode Island HAVA Election Fund, including but not limited to the requirements payments. Priorities and timelines will be incorporated into the budgeting process so that Rhode Island will implement mandates and improvements in a wise and timely manner.

SECTION 3. VOTER EDUCATION, ELECTION OFFICIAL EDUCATION AND TRAINING, POLL WORKER RECRUITMENT AND TRAINING

How the State will provide for programs for voter education, election official education and training and poll worker training which will assist the State in meeting the requirements of Title III. – HAVA §254(a)(3)

Status as of 2008: FULLY MET

Throughout the preparation of the State Plan, Rhode Islanders strongly urged the State to develop improved education and training programs for current, potential and future voters; for election officials and for poll workers. A well-informed electorate, supported by well-trained and voter-oriented election officials, is essential – not only for the successful implementation of HAVA requirements, but to improve voter participation in the electoral process.

In redesigning its training and education programs, the State standardized election terms to make information and training easier to understand and more accessible to more audiences.

3.1 VOTER EDUCATION AND OUTREACH

The Secretary of State has pursued a vigorous program of outreach, with particular attention to students. During 2007 and 2008, the Secretary of State conducted 29 voter registration drives at Rhode Island high schools and 14 drives at colleges along with 16 school-based mock elections. Registration and voter information was promoted at eight events at colleges, hospitals, business expos and other venues and the Automark accessible voting equipment was demonstrated at five venues over 2007 and 2008.

The Secretary of State also produces the following educational materials:

- *Your Vote Your Rights* - explains voters' rights
- *About Voting in Rhode Island* - explains the mechanics of how to vote
- *One Vote Makes a Difference* - highlights the importance of voting and motivates people to engage in the democratic process by voting

As required by HAVA, the Board of Elections now ensures that the following materials are posted at each polling place:

- Sample ballots to be used in the election at each polling place
- Instructions on how to vote
- General information on federal and state laws regarding fraud and misrepresentation
- Date and hours during which the polling place will be open
- Instructions for mail-in registrants and first-time voters under Section 303(b)

- General information on voting rights under federal and state laws, including information on how to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to be violated

Rhode Island recognizes the need to ensure that voter information is uniform, that it is communicated in plain and easily understood wording and that it must be accessible to individuals in the variety of ways necessary to ensure widespread inclusion

Rhode Island set three goals for public outreach and education programs in its 2003 State Plan:

- Assure that voters are informed of their rights and receive proper and timely instructions on how to vote in accordance with HAVA requirements
- Improve voter education and information materials and delivery systems
- Motivate individuals to exercise their democratic responsibility to register and vote

The Secretary of State has implemented comprehensive voter education and outreach programs in every election since 2004. Elements have included:

- Broadcast public service announcements urging people to vote and publicizing the voter information hotline for voter-related questions
- Use of diverse media and content to promote registration and voting for different needs within the electorate:
  - Promoting uniform terminology in all materials
  - Bus, broadcast, print and web materials
  - Simple and direct language in voter education materials in English and Spanish
  - Considering the special needs of voters with disabilities.
- The Secretary of State reached out to youth, military voters and the general public in partnership with Campus Compact of Rhode Island, non-profit organizations and corporate citizens that allowed his staff to reach out to their patrons
- A toll-free voter information hotline to help Rhode Island voters find their polling locations and understand the electoral system

3.2 ELECTION OFFICIAL EDUCATION AND TRAINING

As a result of HAVA mandates, local election officials needed to learn new voter registration systems and procedures and are now responsible for ensuring compliance with many new requirements.

Training was provided to election officials in all HAVA mandates, including:

- The use of all voting equipment including optical scans and Automark
- CVRS
- Registration requirements
- Provisional voting

- Voting by mail ballot
- Voting on election day
- Other applicable state and federal election laws

3.3 POLL WORKER RECRUITMENT AND TRAINING

During public hearings to develop the State Plan, local election officials as well as voters expressed the need for improved poll worker recruitment and training. Rhode Island has been chronically challenged by its ability to recruit a sufficient number of qualified poll workers for the conduct of elections.

The changes under HAVA required that poll workers be well-versed in these new and sometimes complex requirements, especially voter identification requirements, provisional voting and the use of standard and Automark voting equipment. Poll worker training is the responsibility of the Board of Elections

From 2003 onward, numerous innovations in poll worker training were introduced. The Secretary of State and the Board of Elections now routinely hold training and refresher training on changes in the law.

In 2004, the Rhode Island General Assembly passed H-8033 and S-2856, which expanded the pool of eligible voters qualified to serve as poll workers and provided for the earlier appointment of poll workers. This enables election officials to better identify those precincts where poll worker shortages exist and to recruit additional persons to fill the vacancies. These bills became effective without the Governor's signature.

Much remains to be done. Following statewide hearings last year, Secretary of State A. Ralph Mollis' Voters First Advisory Commission made the following recommendations:

- Standardize compensation for poll workers statewide (legislation required)
- Create regional poll worker training centers
- Provide hands-on training with voting equipment
- Create web-accessible training videos for review purposes (not training)
- Provide poll workers with access to computers for training reviews
- Limit the number of hours each poll worker must serve on election day
- Create a standard manual including "problem solver" sections for all poll workers
- Require post-election evaluation of poll-worker performance and develop steps to help those encountering difficulty improve
- Require each city and town to send at least six poll workers per election precinct to Board of Elections training and to send at least 10% of the total number of poll workers for training so they may act as replacements and provide relief for poll workers on election day

SECTION 4. VOTING SYSTEM GUIDELINES AND PROCESSES

How the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301. – HAVA §254 (a)(4)

Status as of 2008: FULLY MET

With the adoption of Chapters 277 & 298 of Rhode Island Public Law of 1996 and the implementation of the optical scan precinct count voting system in 1998, Rhode Island voting systems already met most HAVA requirements listed in Section 301.

Where Rhode Island was not in compliance, the State adopted internal procedures or legislation to come into compliance, specifically:

- The adoption of uniform and nondiscriminatory standards. RIGL 17-19-1 enacted on July 7, 2004 defines what constitutes a vote and what will be counted as a vote for each category of voting system used in the state
- Modified printed instructions and voter education for mail ballots explaining the effect of casting multiple votes and instructing the voter how to correct errors, including how to receive a replacement ballot if necessary

SECTION 5. RHODE ISLAND'S HAVA FUND MANAGEMENT

How the State will establish an election fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management. – HAVA §254 (a)(5)

Status as of 2008: FULLY MET

In accordance with state law and in coordination with the DOA, the Secretary of State established the Rhode Island HAVA Election Fund (Fund) within the State's treasury whose appropriations are accounted for separately within the State accounting system. The DOA created accounting structures to ensure federal fund receipts and expenditures, the 5% State match and Fund interest are tracked separately from all other state funds as required under HAVA.

The Fund consists of the following:

- Amounts appropriated or otherwise made available by the State for carrying out the activities for which the requirements payment is made to the State under this part
- The requirements payment made to the State
- Other amounts as may be appropriated under law
- Interest earned on deposits of the Fund

The Secretary of State formed a HAVA Election Fund Management Committee to advise on and review the budget in connection with the original 2003 HAVA State Plan. That Committee approved the multi-year budget for full HAVA implementation. The Secretary of State has had responsibility for day-to-day management of the Fund since 2003.

SECTION 6. RHODE ISLAND'S HAVA BUDGET

The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on–

(A) the costs of the activities required to be carried out to meet the requirements of Title III,

(B) the portion of the requirements payment that will be used to carry out activities to meet such requirements, and

(C) the portion of the requirements payment that will be used to carry out other activities.

– HAVA §254(a)(6)

Status as of 2008: FULLY MET

HAVA funding was provided under Title I and Title II of the Act. Title I funds must be used for voting equipment, while Title II funds support all other needs. HAVA funds are "no-year" money, that is, federal funds that do not have to be expended in the year they are authorized. The original budget was designed to steward HAVA funds over many years to ensure that funding was reserved to continue to meet HAVA requirements after initial implementation.

The original budget anticipated federal payments of $21 million over the three years that ended in 2005 – based on the authorization of funds. Actual federal appropriations and payments to Rhode Island were less than anticipated: $16,598,533.

HAVA Fund Summary as of December 31, 2007

Title I Total Money Received	$5,001,730.71
Title II Total Money Received	$11,596,803.00
Total	**$16,598,533.71**
Title I Money Interest	$187,374.18
Title II Money Interest	$429,560.37
Total	**$616,934.55**
Title I Total Money Disbursed	$5,153,691.71
Title II Total Money Disbursed	$10,702,078.75
Total	**$15,855,770.46**
Balance in Title I	$35,413.18
Balance in Title II	$1,324,284.62
Balance as of 2007	**$1,359,697.80**
5% (actually 5.26%) match of $11,596,803.00 (spent from general fund account)	**$609,991.84**

Fortunately, the State realized major savings (more than $9 million) with the decision not to convert its voting equipment to DRE voting machines.

On the other hand, the DOA decided that multi-year-payment obligations for the State's optical scan equipment and its service contract should be met with HAVA funding. That equipment was purchased in the 1990s, long before HAVA.. DOA's decision obligated more than $5 million that the State Plan had envisioned using to fund additional improvements to our voting system.

Those factors, together with variances in other line items, resulted in total spending of $16,465.762.30 through 2007. Training and voter education suffered the most from the scaled-back funding.

Summary of HAVA expenditures through Dec. 31, 2007

Category	Spent from Title I, Title II and Interest	Spent from 5% Match	Total by category
Central Voter Registration System	$6,444,967.54	$56,564.00	$6,501,531.54
Provisional Voting	$115,908.24	$24,686.53	$140,594.77
Accessible Voting Equipment	$4,106,155.98	$25,665.85	$4,131,821.83
Optical Scan Voting Equipment	$5,013,013.97	$25,988.67	$5,039,002.64
Election Official Training	$21,826.10	$8,837.97	$30,664.07
Poll Worker Recruitment & Training	$73,961.80	$80,088.66	$154,050.46
Voter Registration	$0.00	$41,188.67	$41,188.67
Voter Education	$76,331.43	$175,566.97	$251,898.40
Complying with Requirements	$2,855.40	$90,770.26	$93,625.66
Preparation of State Plan	$750.00	$80,634.26	$81,384.26
TOTAL	**$15,855,770.46**	**$609,991.84**	**$16,465,762.30**

SECTION 7. MAINTENANCE OF EFFORT

How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000. – HAVA §254(a)(7)

Status as of 2008: FULLY MET

The intent of HAVA funding is to pay for new or enhanced efforts, not to supplant State funding. Consistent with HAVA §254(a)(7), in using any requirements payment, Rhode Island must maintain expenditures of the State for activities funded by the payment at a level equal to or greater than the level of expenditures in State FY 2000 so long as the State has any HAVA funds in its account.

That amount totaled $421,742, which has been met in each year.

SECTION 8. HAVA PERFORMANCE GOALS AND MEASURES

How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the Plan, including timetables for meeting each of the elements of the Plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

Status as of 2008 FULLY MET

The original State Plan itself laid out clear, time-bound and measurable objectives for each element of HAVA and designated the state officials whose duties and responsibilities as outlined by Rhode Island statute corresponded to particular HAVA sections (see list below). This revision of the State Plan specifically details how and when each objective was met, thus satisfying the intent and requirement of HAVA Section 8.

This revised State Plan also makes clear that the State did all that it said it would do in 2003 to bring its law and regulations, equipment and electoral procedures into compliance with HAVA. The physical and administrative structures for fair, fully accessible elections over the next 20 years or more have been put in place.

Ultimately, the success of the State Plan will be judged by its ability to continue to improve voter participation and confidence in elections in Rhode Island.

The original State Plan anticipated developing a HAVA measurement system to assess both process and impact performance. Specifically,

- Did the State do what it said it would do within HAVA mandates and timetables (*process* measures)
- Did those activities make a difference in the conduct of and participation in elections in Rhode Island (*impact* measures)?

Reduced funding has been a factor in deferring development of a formal assessment system to answer the second question: the quality of the conduct of election or the level and nature of voter participation.

However, data from the Board of Elections show that the steps taken have had direct impact: New and updated voter registrations via the new DMV "motor-voter" registration process have grown steadily. During the first year of implementation in 2004, 1,196 new voters were registered at DMV and 3,409 updated their registration information. In 2007, 20,532 new voters registerd at DMV and 5,671 updated their voter records. This represents a significant expansion of the electorate itself as well as an important new path by which voters themselves now help ensure the integrity and currency of our statewide voter registration records.

Rhode Island continues to rely on provisional ballots to ensure that every properly eligible voter can exercise his right to vote, even when election day voter-record-errors or discrepancies exist. The Office of the Secretary of State has increased voter education and created a web-based Voter Information Center database so Rhode Islanders can confirm the status of their voter registration status and address discrepancies prior to the day of voting. Since that time, it is worthwhile to note that number of voters requiring a provisional ballot has decreased.

2004 General Election:	2,246
2006 General Election:	1,850
2006 Primary Election:	3,204
2008 Presidential Primary:	1,104

Each provisional ballot represents a voter who would have been turned away from the polls on election day under prior procedures.

Rhode Island's Presidential Preference Primary (PPP) in March 2008 attracted a record number of voters – 213,435, up more than 550% compared to the 2004 PPP and three times the number of voters who turned out in 2000 for the last competitive PPP. Thanks to HAVA, Rhode Island's election systems, voting equipment, polling places and public information were up to the challenge. The election took place without serious problems, delays or challenges at any polling place in the state.

Specific responsibilities for HAVA implementation:

<u>Secretary of State</u>

- Voting Systems, §301
- Voter Registration (CVRS), §303(a)
- Voter Education, §254(a)(3)
- Election official training, §254(a)(3)
- Budget and Fiscal Controls, §254(a)(3), §254(a)(6), §254(a)(7) and §254(a)(10)

<u>Chair, Board of Elections</u>

- Provisional Voting, §302 (a)
- Voting Information Requirements, §302(b)
- Voter Registration, §303(b)

- Poll worker training, §254(a)(3)
- Election official training, §254(a)(3), jointly with Secretary of State
- Administrative Complaint Procedures, §254(a)(9) and §402

SECTION 9. STATE-BASED ADMINISTRATIVE COMPLAINT PROCEDURE

A description of the uniform, nondiscriminatory State-based administrative complaint procedure in effect under Section 402.

Status as of 2008: FULLY MET

The Rhode Island General Laws empower the Board of Elections to *"make the rules, regulations, and directives that it deems necessary to carry out the objects and purposes of this title (Title 17 – Rhode Island Election Laws) not inconsistent with law... including the jurisdiction over all election matters on appeal from any local board and over any other matters pertinent and necessary to the proper supervision of election laws."*

In its 2003 session, the Rhode Island General Assembly adopted RIGL 17-7-5(15), which authorizes the Board of Elections to "establish and maintain an administrative complaint procedure in accordance with Section 402 of HAVA."

In Rhode Island, the Board of Elections hears complaints and conducts investigations on all election matters. After duly posting proposed regulations and holding public hearings, the Board of Elections adopted new regulations meeting the HAVA requirements on March 25, 2004. Those regulations were re-filed on January 3, 2007 and may be viewed online at: *http://www2.sec.state.ri.us/dar/regdocs/released/pdf/BOE/BOE_2878.pdf.*

SECTION 10. EFFECT OF TITLE I PAYMENTS

If the State received any payments under Title I, a description of how such payment will affect the activities proposed to be carried out under the Plan, including the amount of funds available for such activities.
– HAVA §254(a)(10)

Status as of 2008: FULLY MET

The 2003 *Rhode Island State Plan* for HAVA included details on the planned use of Title I funds, including amounts for each activity.

Rhode Island used its Title I payments to carry out the following activities:

- Complying with Centralized Voter Registration System requirements under Title III
- Improving the administration of elections
- Recruiting poll workers including high school and college students
- Educating voters concerning voting procedures, voting rights and voting technology
- Training election officials, poll workers and election volunteers
- Developing the State Plan for requirements payments to be submitted under Part 1 of Subtitle D of Title II
- Acquiring, improving and increasing the total number of voting systems
- Establishing toll-free telephone hotlines

RHODE ISLAND STATE PLAN : HELP AMERICA VOTE ACT – REVISED AND UPDATED, 2008

SECTION 11. RHODE ISLAND'S HAVA STATE PLAN MANAGEMENT

How the State will conduct ongoing management of the Plan, except that the State may not make any material change in the administration of the plan unless the change–

> *(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;*
> *(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and*
> *(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A). – HAVA §254 (a) (11)*

Status as of 2008: FULLY MET

The Secretary of State, as Rhode Island's designated "Chief State Election Official" (Chapter 29 & 30 of Rhode Island Public Law 2003) is responsible for coordination of the State's responsibilities under HAVA and for ongoing management of the State Plan.

Rhode Island was a national leader in developing fair, accurate and accessible elections prior to the passage of HAVA in 2002 and has leveraged HAVA assistance since 2002 to extend its leadership in this area. The Secretary of State considers the ongoing management of the State Plan as a continuation of Rhode Island's commitment to election reform. Each element has been managed to achieve compliance, maximize improvements to all aspects of the election process and ensure responsible stewardship of funding received through HAVA.

Of course, the Secretary of State does not act alone. The Board of Elections and the local boards of canvassers are critical partners in the implementation of HAVA, as they are in the conduct of all elections in Rhode Island. The Board of Elections and the local boards of canvassers are responsible for specific elements of the State Plan. Within the Office of the Secretary of State, the Elections Division is the administrative agency charged with the implementation and management of many aspects of HAVA.

The Secretary of State appointed a ten-member Voters First Advisory Commission in April 2007 to review and reform the state's election laws. The Commission was charged with initiating changes in law, regulation and rules which would make it easier for Rhode Islanders to vote and which would restore their confidence in the fairness of our electoral process. Those recommendations were before the Rhode Island General Assembly

The responsibility for fair, accurate and accessible elections and for increasing voter participation in our democracy is shared throughout Rhode Island. The legislature is a critical partner, ensuring that Rhode Island state law is consistent with all federal election mandates, including HAVA. In addition, all elected officials, civic and business leaders, community-based organizations, every citizens and educators share a commitment to improving voter outreach and education in order to increase the participation of all segments of our community in the electoral process which is the bedrock of our democracy.

The State understands and agrees to comply with HAVA requirements related to the ongoing management of the State Plan. Specifically, the State agrees not to make any material change in the administration of the State Plan unless the change:

- Is developed and published in the Federal Register in accordance with HAVA §255 in the same manner as the State Plan
- Is subject to public notice and comment in accordance with HAVA §256 in the same manner as the State Plan
- Takes effect only after the expiration of the 30-day period that begins on the date the change is published in the Federal Register in accordance with subparagraph (A)

SECTION 12. CHANGES TO STATE PLAN FROM PREVIOUS FISCAL YEAR

In the case of a State with a State Plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State Plan for the previous fiscal year and of how the State succeeded in carrying out the State Plan for such previous fiscal year. – HAVA 254 (a)(12)

This is Rhode Island's 2008 State Plan, addressing Fiscal Years 2009 and beyond. As the first update of the State Plan following five years of implementation, every element of this Plan reflects the achievement of HAVA requirements and planned objectives in the 2003 plan. All of the HAVA requirements have been fully met and no further actions are planned under most of the sections of the Act. Funding permitting, future work through HAVA will address training, education and outreach to voters.

Specifics on those achievements and future activities are given in the narrative under each Section above. A concise summary without narrative may also be found in Tables I, II and III in this report.

SECTION 13. STATE PLAN DEVELOPMENT AND COMMITTEE

A description of the committee which participated in the development of the State Plan in accordance with section 255 and the procedures followed by the committee under such Section 255 and Section 256 – HAVA §254 (a) (13)

13.1 PUBLIC ENGAGEMENT

The process for producing Rhode Island's original HAVA State Plan reflected a genuine, statewide commitment to improving elections, to public engagement and to open and ethical government. This State Plan reflects careful consideration of the ideas and concerns of hundreds of individuals and public officials from throughout Rhode Island.

The draft of the 2003 Rhode Island State Plan was created by the Secretary of State in partnership with a 75-member HAVA Rhode Island Advisory Committee. The committee included a wide representation of diverse stakeholders selected from all segments of the Rhode Island community, including elected officials, racial and ethnic communities, nonprofits and advocacy groups, students, business leaders, academics and labor unions.

Between March 10 and March 21, 2003, the subcommittees of the HAVA Rhode Island Advisory Committee met to discuss Rhode Island's current compliance with HAVA and identify key issues. They presented their preliminary reports for consideration and discussion at their March 24, 2003 meeting. These subcommittee reports were posted on the HAVA website of the Secretary of State at www.state.ri.us/HAVA/. On May 19, 2003, a draft of the State Plan was presented to the full HAVA Advisory Committee for final review and comments and made available for public comment for 30 days. The final State Plan was released on August 13, 2003.

Rhode Island successfully implemented many HAVA requirements in time for the 2004 Presidential election as documented above. Comments and input based on practical experience in the 2004 and 2006 elections have been solicited from members of the public, poll workers and state and local election officials in creating this revised plan.

In 2007, Secretary of State Mollis appointed a ten-member Voters First Advisory Commission to review and reform the state's election laws. With testimony at five public hearings and deliberation at 11 workshop sessions, the Commissioners developed non-partisan White Papers on specific issues. Several recommended policies focused on the integrity of the process, including voting-booth privacy, restrictions on political canvassing at polling places and cleaning up voter rolls. Others promoted improving voter access through an early voting initiative, uniform statewide polling hours and expanded opportunities to register to vote.

13.2 VOTERS FIRST ADVISORY COMMISSION

Secretary of State Mollis extends his thanks and appreciation to the ten members of the Voters First Advisory Commission who have worked so hard over 2007 and 2008 to inform his ongoing responsibilities as Chief State Election Officer of Rhode Island. They have performed outstanding public service. The members are:

- Secretary of State Mollis, Chairman
- State Rep. Joe Almeida (D-Providence)
- State Rep. Jon D. Brien (D-Woonsocket)
- State Sen. June Gibbs (R- Little Compton, Middletown, Newport, Tiverton)
- Roger Harris, RI Disability Vote Project
- Robert Kando, executive director, state Board of Elections
- Ken McGill, registrar, Pawtucket Board of Canvassers
- State Sen. Juan Pichardo (D-Providence)
- Jan Ruggiero, director of Elections, Office of the Secretary of State
- Sue Stenhouse, deputy director, Governor's Office of Community Relations

13.3 HAVA RHODE ISLAND ADVISORY COMMITTEE

The members of the HAVA Rhode Island Advisory Committee are:

Dennis L. Algiere, ***Senate Minority Leader***

Andy M. Andujar, ***President, Rhode Island Young Democrats***

Jane Anthony, ***Past Chairwoman, Rhode Island Commission on Women***

Bob Arruda, ***Past President, Operation Clean Government***

Scott Avedisian, ***Mayor, City of Warwick***

Catherine Avila, ***Director of Administration, Office of the Secretary of State***

Rick Battistoni, ***Professor of Political Science, Providence College***

Kate Bowden, ***Staff Attorney, Rhode Island Disability Law Center***

Robert T. Bray, ***Adjutant General***

Kerry Brusini, Director, ***North Providence Board of Canvassers***

Edwin Cancel, ***former Executive Director, Progreso Latino, Inc.***

Rory Carmody, ***Director of Program Development, Cranston ARC***

Wayne Charness, ***Senior Vice President of Corporate Communications, Hasbro***

David N. Cicilline, ***Mayor, City of Providence***

Marian Clarke, ***Chairwoman, Jamestown Board of Canvassers***

Kathleen Connell, *State Director, AARP- RI*

Bob Cooper, *Executive Secretary, Governor's Commission on Disabilities*

Antonio Costa, *Portuguese-American Community Leader*

Hollie Courage, *President, League of Women Voters of RI*

John Daluz, *Chairman, RI State Board of Elections*

Melba Depeña, *Past President, Rhode Island Latino Civic Fund*

Grace Farmer, *Financial Manager, HELP Coalition*

Dave Fleming, *President, Local 328, United Food & Commercial Workers*

Laurence K. Flynn, *Chairman, Providence Board of Canvassers*

Gordon D. Fox, *House Majority Leader*

Richard Gaffney, *President, National Federation of the Blind of Rhode Island*

Mary Alyce Gasbarro, *League of Women Voters*

Elaina K. Goldstein, *Member, Republican State Central Committee*

Alan Hassenfeld, *Chairman & Chief Executive Officer, Hasbro*

A. Vincent Igliozzi, *Administrator, State Equal Opportunity Programs*

Stan Israel, *Vice President New England Health Care Employees Union, District 1199/SEIU*

Robert Kando, *Executive Director, State Board of Elections*

Brian Krueger, *Assistant Professor of Political Science, University of Rhode Island*

David Lagstein, *Head Organizer, ACORN*

Dennis B. Langley, *Executive Director, Urban League of Rhode Island*

Joseph Le, *Executive Director, Socio Economic Development Center for Southeast Asians*

Peter Lee, *Executive Director, John Hope Settlement House*

Charlene Lima, *Speaker Pro Tempore*

Christine Lopes, *Executive Director, Common Cause RI*

William Lynch, Chairman, *Rhode Island Democratic State Committee*

Ray Marcaccio, *Legal Counsel, Rhode Island State Board of Elections*

Ramon Martinez, *Executive Director, Progreso Latino, Inc.*

Donna McDonald, *Warwick Board of Canvassers*

Norrene D. McGeary, *East Greenwich Board of Canvassers*

Ken McGill, Registrar, *Pawtucket Board of Canvassers*

Kristen Meuse, *Past President, Rhode Island Young Democrats*

Maureen Moakley, *Professor of Political Science, University of Rhode Island*

Joseph A. Montalbano, *President of the Senate*

Kate Monteiro, *Rhode Island Alliance for Lesbian & Gay Civil Rights*

Clifford R. Montiero, *President, NAACP - Providence Branch*

John Muggeridge, *General Manager and Vice President of Public Affairs, Fidelity Investments*

Domingo Morel, *RI Latino Civic Fund*

William J. Murphy, *Speaker of the House*

Michael T. Napolitano, *Mayor, City of Cranston*

Ellen O'Hara, *Past President, Rhode Island Chapter of the National Association of Social Workers*

Rick O'Neill, *Canvassing Clerk, Newport Board of Canvassers*

Thomas Palombo, *Assistant Attorney General*

Madeleine Pencak, *Registrar, Portsmouth Board of Canvassers*

Bob Rapoza, *Supervisor of Elections and Voter Registration Services, State Board of Elections*

Elizabeth H. Roberts, *Lieutenant Governor*

Rob Rock, *CIVICS Coordinator, Office of the Secretary of State*

Jan Ruggiero, *Director of Elections & Civics Division, Office of the Secretary of State*

Miguel Sanchez-Hartwein, *Executive Director, Center for Hispanic Policy and Advocacy*

Merrill Sherman, *President and Chief Executive Officer, Bank RI*

Marie Sorman, *Director of Community Development, City of Cranston*

Molly Soum, *President, The Cambodian Society*

Cathy Speer, *State Governing Board, Common Cause/Rhode Island*

June Spink, *Operation Clean Government*

Katrina A. Therien, *North Smithfield resident*

Matthew Thomas, *Chief Sachem, Narragansett Indian Tribe*

Jeff Toste, Co-Chair, *Green Party of Rhode Island*

James Vincent, *Manager of Constituent Services, Rhode Island Housing*

Robert A. Walsh Jr., *Executive Director, National Education Association/Rhode Island*

APPENDICES

TABLE I: SECTION 301. VOTING SYSTEMS STANDARDS

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
SEC. 301. VOTING SYSTEMS STANDARDS.		
(a) REQUIREMENTS. – Each voting system used in an election for federal office shall meet the following requirements:		
(1) IN GENERAL. –		
(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system or direct recording electronic system) shall --		
(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted;	**OpTech voting system meets the requirement.**	Maintain system.
(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and	**OpTech voting system meets the requirement.**	Maintain system.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(iii) if the voter selects more than one candidate for a single office— (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.	**OpTech voting system meets the requirement.**	Maintain system.
(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by--		
(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and	**Meets the Requirement.** Instructions added to Voter Information Handbook and materials sent to mail-in absentee voters.	Continue to update

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).	**Meets the Requirement.** Instructions added to Voter Information Handbook and materials sent to mail-in absentee voters.	All future voter information will include this information.
(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.	**Meets the Requirement.**	Maintain.
(2) AUDIT CAPACITY.--		
(A) IN GENERAL.--The voting system shall produce a record with an audit capacity for such system.	**OpTech voting system meets the requirement.**	Maintain system.
(B) MANUAL AUDIT CAPACITY.--		
(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.	**OpTech voting system meets the requirement.**	Maintain system.
(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.	**OpTech voting system meets the requirement.**	Maintain system.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.	**OpTech voting system meets the requirement.**	Maintain system.

(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.--The voting system shall--		
(A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;	**Accumark system in each polling place meets the requirement.**	Maintain system.
(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and	**Accumark system in each polling place meets the requirement.**	Maintain system.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(C) if purchased with funds made available under Title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).	**Accumark system in each polling place meets the requirement.**	The State will ensure that it remains in compliance with HAVA requirements as needed.
(4) ALTERNATIVE LANGUAGE ACCESSIBILITY.--The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).	**OpTech voting system meets the requirement.**	Maintain system.
(5) ERROR RATES. -- The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.	**OpTech voting system meets the requirement.**	Maintain system.
(6) UNIFORM DEFINITION OF WHAT CONSTITUTES A VOTE.--Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.	**Meets the Requirement.** Board of Elections promulgated regulations in September 2002 on what constitutes a vote on optical scan system.	Maintain system.

TABLE II: SECTION 302. PROVISIONAL VOTING AND VOTING INFORMATION REQUIREMENTS

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
SEC. 302. PROVISIONAL VOTING AND VOTING INFORMATION REQUIREMENTS.		
(a) PROVISIONAL VOTING REQUIREMENTS.--If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:		
(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.	**Meets the Requirement.** In 2003, RIGL 17-19-24.1 was enacted to allow for provisional voting in accordance with HAVA requirements.	Maintain.
(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is--		

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(A) a registered voter in the jurisdiction in which the individual desires to vote; and	**Meets the Requirement.** In 2003, RIGL 17-19-24.1 was enacted to allow for provisional voting in accordance with HAVA requirements.	Maintain.
(B) eligible to vote in that election.	**Meets the Requirement.** In 2003, RIGL 17-19-24.1 was enacted to allow for provisional voting in accordance with HAVA requirements.	Maintain.
(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).	Meets the Requirement	The Board of Elections adopted rules and regulations for provisional voting in 2004.
(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.	**Meets the Requirement.** The Board of Elections adopted rules and regulations for provisional voting in 2004	Maintain.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(5) (A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.	**Meets the Requirement.** The Board of Elections adopted rules and regulations for provisional voting in 2004	Maintain.
(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.	**Meets the requirement.** Board of Elections created online system where voters may determine the status of their provisional vote.	Maintain.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
States described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)) may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality and integrity of personal information collected, stored or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.	**This section does not apply.** Rhode Island is not exempt from National Voter Registration Act requirements.	N/A.

(b) VOTING INFORMATION REQUIREMENTS.–		
(1) PUBLIC POSTING ON ELECTION DAY.–The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.	**Meets the requirement.** The Board of Elections posts the required information.	Maintain.
(2) VOTING INFORMATION DEFINED.--In this section, the term "voting information" means--		
(A) a sample version of the ballot that will be used for that election;	**Meets the requirement.** Sample ballots are prepared by the Secretary of State.	Maintain.

HAVA LEGISLATIVE REQUIREMENTS		STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
	(B) information regarding the date of the election and the hours during which polling places will be open;	**Meets the requirement.** The Board of Elections posts the required information.	Maintain.
	(C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;	**Meets the requirement.** The Board of Elections posts the required information.	Maintain.
	(D) instructions for mail-in registrants and first- time voters under section 303(b);	**Meets the requirement.** The Board of Elections provides the required information.	Maintain.
	(E) general information on voting rights under applicable federal and state laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and	**Meets the requirement.** The Board of Elections posts the required information.	Maintain.
	(F) general information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation.	**Meets the requirement.** The Board of Elections posts the required information.	Maintain.

HAVA LEGISLATIVE REQUIREMENTS		STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
	(c) VOTERS WHO VOTE AFTER THE POLLS CLOSE.-- Any individual who votes in an election for Federal office as a result of a federal or state court order or any other order extending the time established for closing the polls by a state law in effect ten days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.	**Meets the Requirement.** The Board of Elections adopted rules and regulations to implement provisional voting	Maintain

TABLE III. SECTION 303. COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS AND REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
SEC. 303. COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS AND REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL.		
(a) COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST REQUIREMENTS.--		
(1) IMPLEMENTATION.–		
(A) IN GENERAL.--Except as provided in subparagraph (B), each State, acting through the Chief State Election Official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the state level that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state (in this subsection referred to as the "computerized list"), and includes the following:	**Meets the Requirement.** The CVRS was completely installed in all 39 cities and towns in December 2004.	Maintain

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout Rhode Island.	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Maintain.
(ii) The computerized list contains the name and registration information of every legally registered voter in Rhode Island.	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Maintain.
(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in Rhode Island.	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Maintain.
(iv) The computerized list shall be coordinated with other Rhode Island agency databases.	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Maintain.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(v) Any election official, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Maintain.
(vi) All voter registration information obtained by any local election official shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Maintain.
(vii) The Chief State Election Official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Ongoing training and a help desk are provided as needed.
(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for federal office in the state.	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Maintain.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(B) EXCEPTION.--The requirement under subparagraph (A) shall not apply to a state in which, under a state law in effect continuously on and after the date of the enactment of this Act, there is no voter registration requirement for individuals in the state with respect to elections for federal office.	**Not applicable.** Rhode Island had a voter registration requirement prior to HAVA.	Maintain.
(2) COMPUTERIZED LIST MAINTENANCE.--		
(A) IN GENERAL.--The appropriate State or local election official shall perform list maintenance with respect to the computerized list on a regular basis as follows:		
(i) If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), including subsections (a)(4), (c)(2), (d) and (e) of section 8 of such Act (42 U.S.C. 1973gg-6).	**Meets the requirement.** CVRS business rules are set in accordance with NRVA and related state and federal law	Maintain.
(ii) For purposes of removing names of ineligible voters from the official list of eligible voters--		

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(I) under section 8(a)(3)(B) of such Act (42 U.S.C. 1973gg-6(a)(3)(B)), the State shall coordinate the computerized list with State agency records on felony status; and	**Meets the requirement.**	Maintain.
(II) by reason of the death of the registrant under section 8(a)(4)(A) of such Act (42 U.S.C. 1973gg-6(a)(4)(A)), the State shall coordinate the computerized list with State agency records on death.	**Meets the requirement.** CVRS business rules are set in accordance with NRVA and related state and federal law	Maintain.
(iii) Notwithstanding the preceding provisions of this subparagraph, if a state is described in section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)), that state shall remove the names of ineligible voters from the computerized list in accordance with state law.	Not applicable as Rhode Island is not a state described in 4(b) of the NVRA.	Not applicable as Rhode Island is not a state described in 4(b) of the NVRA.
(B) CONDUCT.--The list maintenance performed under subparagraph (A) shall be conducted in a manner that ensures that--		

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED	
(i) the name of each registered voter appears in the computerized list;	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Maintain	Maintain.
(ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Maintain.	
(iii) duplicate names are eliminated from the computerized list.	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Maintain.	
(3) TECHNOLOGICAL SECURITY OF COMPUTERIZED LIST.--The appropriate State or local official shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Maintain.	

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(4) MINIMUM STANDARD FOR ACCURACY OF STATE VOTER REGISTRATION RECORDS.--The State election system shall include provisions to ensure that voter registration records in the state are accurate and are updated regularly, including the following:	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004.	Maintain.
(A) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.	**Meets the Requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004. The system includes automatic reminders when the conditions for removal are met.	Maintain.
(B) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.	**Meets the requirement.**	The State will continue to improve processes with CVRS.
(5) VERIFICATION OF VOTER REGISTRATION INFORMATION.--		

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(A) REQUIRING PROVISION OF CERTAIN INFORMATION BY APPLICANTS. --		
(i) IN GENERAL.--Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for federal office may not be accepted or processed by a state unless the application includes--		
(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or	**Meets the requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004 and the adoption of appropriate rules and regulations by the Board of Elections.	Maintain.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.	**Meets the requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004 and the adoption of appropriate rules and regulations by the Board of Elections.	Maintain.
(ii) SPECIAL RULE FOR APPLICANTS WITHOUT DRIVER'S LICENSE OR SOCIAL SECURITY NUMBER.--If an applicant for voter registration for an election for federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.	**Meets the requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004 and the adoption of appropriate rules and regulations by the Board of Elections.	Maintain.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(iii) DETERMINATION OF VALIDITY OF NUMBERS PROVIDED.--The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with state law.	**Meets the requirement.** The State fully met this requirement upon implementation of the CVRS in December 2004 and the adoption of appropriate rules and regulations by the Board of Elections.	Maintain.
(B) REQUIREMENTS FOR STATE OFFICIALS.--		
(i) SHARING INFORMATION IN DATABASES.--The Chief State Election Official and the official responsible for the state motor vehicle authority shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration.	**Meets the requirement.** Interagency agreement in effect as of January 1, 2005.	Maintain.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(ii) AGREEMENTS WITH COMMISSIONER OF SOCIAL SECURITY.--The official responsible for the state motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section 205(r)(8) of the Social Security Act (as added by subparagraph (C)).	**Meets the requirement**. Interagency agreement in effect as of March 2006.	Maintain.
(b) REQUIREMENTS FOR VOTERS WHO REGISTER BY MAIL.--		
(1) IN GENERAL.--Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c)) and subject to paragraph (3), a state shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if--		
(A) the individual registered to vote in a jurisdiction by mail; and		
(B) (i) the individual has not previously voted in an election for federal office in the state; or		
(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a state that does not have a computerized list that complies with the requirements of subsection (a).		

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(2) REQUIREMENTS.--		
(A) IN GENERAL.--An individual meets the requirements of this paragraph if the individual--		
(i) in the case of an individual who votes in person--		
(I) presents to the appropriate state or local election official a current and valid photo identification; or	**Meets the requirement.** The State fully met HAVA registration and identification procedures upon implementation of the CVRS in December 2004 and adoption of rules and regulations by the Board of Elections.	Maintain.
(II) presents to the appropriate state or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or	**Meets the requirement.** The State fully met HAVA registration and identification procedures upon implementation of the CVRS in December 2004 and adoption of rules and regulations by the Board of Elections.	Maintain.

Maintain.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(ii) in the case of an individual who votes by mail, submits with the ballot--		
(I) a copy of a current and valid photo identification; or	**Meets the requirement.** The State fully met HAVA registration and identification procedures upon implementation of the CVRS in December 2004 and adoption of rules and regulations by the Board of Elections.	Maintain.
(II) a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter.	**Meets the requirement.** The State fully met HAVA registration and identification procedures upon implementation of the CVRS in December 2004 and adoption of rules and regulations by the Board of Elections.	Maintain.
(B) FAIL-SAFE VOTING.--		

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(i) IN PERSON.--An individual who desires to vote in person, but who does not meet the requirements of subparagraph (A)(i), may cast a provisional ballot under section 302(a).	**Meets the requirement.** The State has used provisional ballots since 2004.	Maintain.
(ii) BY MAIL.--An individual who desires to vote by mail but who does not meet the requirements of subparagraph (A)(ii) may cast such a ballot by mail and the ballot shall be counted as a provisional ballot in accordance with section 302(a).	**Meets the requirement.** The State has used provisional ballots since 2004.	Maintain.
(3) INAPPLICABILITY.--Paragraph (1) shall not apply in the case of a person--		
(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) and submits as part of such registration either--		

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(i) a copy of a current and valid photo identification; or	**Meets the requirement.** The State fully met HAVA registration and identification procedures upon implementation of the CVRS in December 2004 and adoption of rules and regulations by the Board of Elections.	Maintain.
(ii) a copy of a current utility bill, bank statement, government check, paycheck or government document that shows the name and address of the voter;	**Meets the requirement.** The State fully met HAVA registration and identification procedures upon implementation of the CVRS in December 2004 and adoption of rules and regulations by the Board of Elections.	Maintain.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(B) (i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (42 U.S.C.1973gg-4) and submits with such registration either--	**Meets the requirement.** The State fully met HAVA registration and identification procedures upon implementation of the CVRS in December 2004 and adoption of rules and regulations by the Board of Elections.	Maintain.
(I) a driver's license number; or (II) at least the last four digits of the individual's social security number; and	**Meets the requirement.** The State fully met HAVA registration and identification procedures upon implementation of the CVRS in December 2004 and adoption of rules and regulations by the Board of Elections.	Maintain.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(ii) with respect to whom a state or local election official matches the information submitted under clause (i) with an existing state identification record bearing the same number, name and date of birth as provided in such registration; or	**Meets the requirement.** The State fully met HAVA registration and identification procedures upon implementation of the CVRS in December 2004 and adoption of rules and regulations by the Board of Elections.	Maintain.
(C) who is--		
(i) entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1 et seq.);	**Meets the requirement.**	Maintain.
(ii) provided the right to vote otherwise than in person under section 3(b)(2)(B)(ii) of the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee-1(b)(2)(B)(ii)); or	**Meets the requirement.**	Maintain.
(iii) entitled to vote otherwise than in person under any other federal law.	**Meets the requirement.**	Maintain.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(4) CONTENTS OF MAIL-IN REGISTRATION FORM.--		
(A) IN GENERAL.--The mail voter registration form developed under section 6 of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4) shall include the following:		
(i) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.	**Meets the requirement.** The CVRS is in place. The Board of Elections has adopted necessary rules and amended voter registration forms.	Maintain.
(ii) The question "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether or not the applicant will be 18 years of age or older on election day.	**Meets the requirement.** The CVRS is in place. The Board of Elections has adopted necessary rules and amended voter registration forms.	Maintain.
(iii) The statement "If you checked 'no' in response to either of these questions, do not complete this form."	**Meets the requirement.** The CVRS is in place. The Board of Elections has adopted necessary rules and amended voter registration.	Maintain.

HAVA LEGISLATIVE REQUIREMENTS	STATE OF RHODE ISLAND CURRENT STATUS (Meets the Requirement, Partially Meets, Does Not Meet)	ACTIONS PLANNED
(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this section must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.	**Meets the requirement.** The CVRS is in place. The Board of Elections has adopted necessary rules and amended voter registration.	Maintain.
(B) INCOMPLETE FORMS.--If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for federal office (subject to state law).	**Meets the requirement.** The CVRS is in place. The Board of Elections has adopted necessary rules and amended voter registration. Automatic.	Maintain.

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DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CD–002]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to LG Electronics From the Department of Energy Residential Clothes Dryer Test Procedures [Case No. CD–002]

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: This notice publishes the Department of Energy's Decision and Order in Case No. CD–002, which grants to LG Electronics Inc. (LG) a waiver from the existing Department of Energy (DOE) residential clothes dryer test procedure for its product line of DLEC733W ventless clothes dryers, because the existing test procedure only applies to clothes dryers that are vented.

DATES: This Decision and Order is effective November 10, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov*.

Ms. Francine Pinto or Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–9507. E-mail: *Francine.Pinto@hq.doe.gov* or *Eric.Stas@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(l), DOE gives notice of the issuance of its Decision and Order as set forth below. In the Decision and Order, DOE grants to LG a waiver from the existing residential clothes dryer test procedure under 10 CFR part 430, subpart B, Appendix D, for its ventless clothes dryer (model DLEC733W), which does not have an outside exhaust.

Issued in Washington, DC, on October 27, 2008.

John F. Mizroch,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: LG Electronics Inc. (LG). (Case No. CD–002)

Background

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' [1] (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) Relevant to the current Petition for Waiver, the test procedure for residential clothes dryers is set forth in 10 CFR part 430, subpart B, Appendix D, ''Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers.''

In addition, DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered products when the petitioner's basic model contains one or more design characteristics that prevent testing of the basic model according to the prescribed test procedure, or when the prescribed test procedure may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers generally terminate on the effective date of a final rule which prescribes amended test procedures appropriate to the model series manufactured by the petitioner, thereby eliminating any need for the continuation of the waiver. 10 CFR 430.27(m).

The waiver process contained in DOE's regulations also allows any interested person who has submitted a Petition for Waiver to file an Application for Interim Waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an Interim Waiver request if it is determined that the applicant will experience economic hardship if the Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. 10 CFR 430.27(g). An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever occurs first, and may be extended by DOE for 180 days, if necessary. 10 CFR 430.27(h).

On November 14, 2005, LG filed an Application for Interim Waiver and Petition for Waiver from the test procedures for energy consumption which are applicable to its product line of ventless [2] clothes dryers, under basic model number DLEC733W. As noted above, the relevant test procedures are contained in 10 CFR part 430, subpart B, Appendix D. LG seeks a waiver from the test procedures for this product line because, LG asserts, the current clothes dryer test procedures only apply to vented clothes dryers and require the use of an exhaust restrictor to simulate the backpressure effects of a vent tube in an installed condition. According to LG, its line of condenser (ventless) clothes dryers does not have exhaust vents and does not vent exhaust air to the outside as do conventional (vented) dryers, and because the test procedures do not provide a definition or mention of a ventless clothes dryer, its products cannot be tested according to 10 CFR part 430, subpart B, Appendix D.

On August 23, 2006, DOE published LG's Petition for Waiver and denied the Application for Interim Waiver. 71 FR 49437. In that notice, DOE proposed and requested comment on an alternate test procedure for testing ventless clothes dryer products, as discussed below. In denying LG's request for an Interim Waiver, DOE questioned whether it

[1] This part was originally titled Part B; however, it was redesignated Part A, after Part B of Title III was repealed by Public Law 109–58.

[2] In LG's Petition for Waiver, the terms ''condenser'' or ''condensing'' were used instead of ''ventless'' to describe this product. No change in meaning is intended by this substitution, which was made to be consistent with other DOE documents.

would ultimately grant a waiver to LG, given the proposed alternate test procedures which may permit testing of ventless dryers and new technologies which could potentially improve the energy efficiency of such products. DOE received comments on the LG Petition from Whirlpool Corporation (Whirlpool), the Association of Home Appliance Manufacturers (AHAM), and Miele, Inc. (Miele).

Assertions and Determinations

LG's Petition for Waiver

On November 14, 2005, LG submitted a Petition for Waiver and an Application for Interim Waiver from the test procedures at 10 CFR part 430, subpart B, Appendix D, which are applicable to residential electric clothes dryers. LG did not include an alternate test procedure with its petition, stating that it knew of no other test procedure to rate its ventless dryer products. Accordingly, as part of the August 23, 2006 **Federal Register** notice, DOE proposed a modified test procedure to accompany the LG Petition for Waiver, which was based on the existing test procedures for clothes dryers under 10 CFR part 430, subpart B, Appendix D, but without a requirement to use an exhaust restrictor. No other changes were made to the test procedure.

After reviewing the public comments received on this matter, DOE notes that Whirlpool agreed with DOE's modified test procedure, but recommended clarifications to DOE's proposed revisions of the definitions pertaining to clothes dryers (*i.e.*, sections 1.14 and 1.15 of the DOE clothes dryer test procedure). The commenting stakeholders (AHAM, Miele, and Whirlpool) all stated that ventless clothes dryers cannot meet the DOE efficiency standard, so accordingly, they recommended a separate product class and efficiency standard for ventless clothes dryers.

In response to the assertions of the industry commenters, DOE has not been able to find data as to whether ventless clothes dryers can or cannot meet the existing DOE clothes dryer energy conservation standard. Nevertheless, DOE acknowledges the commenters' experience in working with this type of product. However, if this type of clothes dryer is indeed unable to meet the standard, DOE cannot, in a waiver, establish a separate product class[3] and associated efficiency level. Instead, such actions must be taken in the context of a standards rulemaking. Such a standards rulemaking was initiated with a Framework Document public meeting held on October 24, 2007. A Final Rule prescribing new efficiency standards for residential clothes dryers is expected in 2011.

It is further noted that on February 17, 1995, DOE published in the **Federal Register** a Decision and Order granting a waiver to Miele for a very similar ventless clothes dryer. 60 FR 9330. Miele's waiver did not require Miele to test its ventless clothes dryers, and in that document, DOE stated that the energy conservation standards for clothes dryers did not apply to Miele's ventless clothes dryers. Despite the passage of time, LG's situation is analogous to that of Miele with regard to ventless clothes dryers. DOE has determined that although it would be feasible to provide LG with an alternate test procedure, as proposed, it is likely, as all the commenters agreed, that the problem is more fundamental than one limited to a needed test procedure change; instead, in spite of technological developments, it is expected that ventless clothes dryers would not meet the DOE energy conservation standard, and that a separate clothes dryer class (with a separate efficiency standard) would have to be established for ventless clothes dryers. Otherwise, a type of product with unique consumer utility could be driven from the market. However, the establishment of product classes cannot be done in a waiver, but only in a standards rulemaking. Therefore, inasmuch as ventless clothes dryers are likely unable to meet the DOE clothes dryer efficiency standard, and there is a long-standing waiver granted to Miele, DOE has decided to grant a similar waiver to LG from testing of its ventless clothes dryers. Therefore, DOE is not making any modifications to its existing clothes dryer test procedure at this time, and it will not require LG to test its specified ventless clothes dryer models under that procedure.

Consultations With Other Agencies

DOE consulted with Federal Trade Commission (FTC) staff concerning the LG petition. The FTC staff did not have any objections to granting a waiver to LG. DOE also consulted with the National Institute of Standards and Technology (NIST) concerning the LG petition, and NIST likewise did not have any objections to granting a waiver to LG.

Conclusion

After careful consideration of all the material that was submitted by LG, the comments received, the review by NIST, and consultation with FTC staff, it is ordered that:

(1) The Petition for Waiver submitted by LG Electronics (LG) (Case No. CD–002) is hereby granted as set forth in the paragraphs below.

(2) LG shall not be required to test or rate its DLEC733W ventless clothes dryer products on the basis of the test procedures at 10 CFR part 430, subpart B, appendix D. The existing 1994 minimum energy conservation standard for clothes dryers at 10 CFR 430.32(h) is not applicable to this LG ventless clothes dryer.

(3) This waiver shall remain in effect from the date this Decision and Order is issued until the effective date of the final rule(s) in which DOE prescribes test procedures and minimum energy conservation standards appropriate to the above model series manufactured by LG.

(4) This waiver is conditioned upon the presumed validity of statements, representations, and documentary materials provided by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Petition for Waiver is incorrect.

Issued in Washington, DC, on October 27, 2008.

John F. Mizroch,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E8–26692 Filed 11–7–08; 8:45 am]

BILLING CODE 6450–01–P

[3] Product classes are established to recognize distinct categories of a covered product that may necessitate different efficiency standard levels.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12557–001–RI]

SBER Royal Mills, LLC; Notice of Availability of Environmental Assessment

November 3, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for exemption from licensing for the Royal Mills Hydroelectric Project, to be located on the South Branch Pawtuxet River, in the Town of West Warwick, Kent County, Rhode Island, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of the project and conclude that issuing an exemption for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Royal Mills Hydroelectric Project No. 12557'' to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. For further information, contact Steve Kartalia at (202) 502–6131.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26687 Filed 11–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–198–000]

New York Independent System Operator, Inc.; Notice of Filing

November 3, 2008.

Take notice that on October 31, 2008, New York Independent System Operator, Inc. filed a request to amend its tariffs to preclude the scheduling of certain external transactions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 10, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26688 Filed 11–7–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8739–6]

Proposed CERCLA Administrative Cost Recovery Settlement; Portland Harbor Superfund Site, Triangle Park Removal Action Area

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement agreement under the authority of section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of response costs concerning the Triangle Park Removal Action Area within the Portland Harbor Superfund Site with Triangle Park LLC (''Settling Party''). The settlement requires the Settling Party to pay $1,200,000 to the Triangle Park Removal Action Area Trust Fund (''TP Trust Fund'') to be used to pay for the cleanup, and includes a covenant not to sue the Settling Party pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). The TP Trust Fund will be established pursuant to an existing Bona Fide Prospective Purchaser Agreement between the University of Portland (''University'') and EPA (''BFPP Agreement''). In the BFPP Agreement, the University agreed to conduct removal action on the Triangle Park property (''Property'') once the University completed the purchase of the Property. The University of Portland has entered into an agreement with Triangle Park LLC to purchase the Property. By acquiring the Property, the University intends to enlarge its campus so that it can continue to expand and pursue its educational and service mission by relocating certain athletic facilities, freeing up its existing land for academic buildings. The University's plan includes public access to the Property, recreational opportunities, including a planned riverfront trail. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be received on or before December 10, 2008.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. EPA Region 10 offices, located at 1200 Sixth Avenue, Seattle, Washington 98101. Comments should reference the Triangle Park Removal Action Area in Portland, Oregon, EPA Docket No. CERCLA–10–2008–0160 and sent to Jennifer G. MacDonald, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Jennifer G. MacDonald, Assistant Regional Counsel, U.S. EPA Region 10, Mail Stop ORC–158, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; (206) 553–8831.

Dated: September 29, 2008.

Daniel D. Opalski,

Director, Office of Environmental Cleanup.

[FR Doc. E8–26700 Filed 11–7–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Extension Being Reviewed by the Federal Communications Commission, Comments Requested

November 4, 2008.

SUMMARY: The Federal Communications Commission (Commission or FCC), as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection extension, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information extension is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 9, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Submit your comments by e-mail to *PRA@fcc.gov.* Include in the e-mail the OMB control number of the collection or, if there is no OMB control number, the Title shown in the **SUPPLEMENTARY INFORMATION** section below. If you are unable to submit your comments by email contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) or to obtain a copy of the collection send an e-mail to *PRA@fcc.gov* and include the collection's OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below (or the title of the collection if there is no OMB control number), or call Jerry Cowden at 202–418–0447.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–1085.

Title: Collection of Location Information, Provision of Notice, and Recordkeeping on Interconnected Voice Over Internet Protocol (VoIP) E911 Compliance (47 CFR Section 9.5).

Form No.: Not applicable.

Type of Review: Extension of a previously approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 12 respondents; 12 responses.

Estimated Time Per Response: 50,197 hours.

Frequency of Response: Recordkeeping requirement and third party disclosure requirements.

Obligation to Respond: Mandatory.

Total Annual Burden: 602,364 hours.

Total Annual Cost: $52,449,272.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: The Commission is not requesting that respondents submit confidential information to the Commission.

Needs and Uses: The Commission is obligated by statute to promote ''safety of life and property'' and to ''encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure'' for public safety. Congress has established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911. Efforts by federal, state and local government, along with the significant efforts of wireline and wireless service providers, have resulted in the nearly ubiquitous deployment of this life-saving service.

The *Order* the Commission adopted on May 19, 2005, sets forth rules requiring providers of VoIP services that interconnect with the nation's existing public switched telephone network (interconnected VoIP services) to supply E911 capabilities to their customers. To ensure E911 functionality for customers of VoIP service providers the Commission requires the following information collections:

A. Location Registration. Requires providers to interconnected VoIP services to obtain location information from their customers for use in the routing of 911 calls and the provision of location information to emergency answering points.

B. Provision of Automatic Location Information (ALI). Interconnected VoIP service providers will place the location information for their customers into, or make that information available through, specialized databases maintained by local exchange carriers (and, in at least one case, a state government) across the country.

C. Customer Notification. Requires that all providers of interconnected VoIP are aware of their interconnected VoIP service's actual E911 capabilities. That all providers of interconnected VoIP service specifically advise every subscriber, both new and existing, prominently and in plain language, the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service.

D. Record of Customer Notification. Requires VoIP providers to obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood this advisory.

E. *User Notification.* In addition, in order to ensure to the extent possible that the advisory is available to all potential users of an interconnected VoIP service, interconnected VoIP service providers must distribute to all subscribers, both new and existing, warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on or near the customer premises equipment used in conjunction with the interconnected VoIP service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–26737 Filed 11–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From November 4, 2008, Open Meeting

November 3, 2008.

The following item has been deleted from the list of Agenda items scheduled for consideration at the November 4, 2008, Open Meeting and previously listed in the Commissioner's Notice of October 28, 2008, 73 FR 64947, October 31, 2008.

Item No.	Bureau	Subject
1	WIRELINE COMPETITION.	TITLE: High-cost Universal Service Support (WC Docket No. 05–337); Federal-State Joint Board on Universal Service (CC Docket No. 96–45); Lifeline and Link Up (WC Docket No. 03–109); Universal Service Contribution Methodology (WC Docket No. 06–122); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03–123); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96–98); Developing a Unified Intercarrier Compensation Regime (CC Docket No. 01–92); Intercarrier Compensation for ISP-Bound Traffic (CC Docket No. 99–68); and IP-Enabled Services (WC Docket No. 04–36). SUMMARY: The Commission will consider a Report and Order, Order on Remand, and Further Notice of Proposed Rulemaking addressing the comprehensive reform of intercarrier compensation and universal service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–26740 Filed 11–6–08; 11:15 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 5, 2008.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. CapitalSource Inc., CapitalSource Finance LLC, and CapitalSource TRS Inc., all of Chevy Chase, Maryland, to become bank holding companies by acquiring 100 percent of the voting shares of CapitalSource Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, November 5, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–26690 Filed 11–7–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0375] (formerly Docket No. 2004D–0555)

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry and Food and Drug Administration Staff; ''Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300''

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by December 10, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title ''Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Class II Special Controls Guidance Document: Labeling for Natural Rubber Latex Condoms Classified Under 21 CFR 884.5300—(OMB Control Number 0910–NEW)

Under the Medical Device Amendments of 1976 (Public Law 94–295), class II devices were defined as those devices for which there was insufficient information to show that general controls themselves would provide a reasonable assurance of safety and effectiveness, but for which there was sufficient information to establish performance standards to provide such assurance.

Condoms without spermicidal lubricant containing nonoxynol-9 are classified in class II. They were originally classified before the enactment of provisions of the Safe Medical Devices Act of 1990 (Public Law 101–629) that broadened the definition of class II devices and now permit FDA to establish special controls beyond performance standards, including guidance documents, to help provide reasonable assurance of the safety and effectiveness of such devices.

In December 2000, Congress enacted Public Law 106–554, which among other provisions, directed FDA to ''reexamine existing condom labels'' and ''determine whether the labels are medically accurate regarding the overall effectiveness or lack of effectiveness in preventing sexually transmitted diseases* * *.'' FDA is recommending labeling changes intended to provide important information for condom users, including the extent of protection provided by condoms against various types of sexually transmitted diseases.

Respondents to this collection of information are manufacturers and repackagers of male condoms made of natural rubber latex without spermicidal lubricant. FDA believes that this is a one-time burden, because once a label is redesigned, it can be used indefinitely.

In the **Federal Register** of November 14, 2005 (70 FR 69156), FDA published a 60-day notice soliciting public comment on the information collection provisions, contained in the draft special controls guidance document then entitled ''Labeling for Male Condoms Made of Natural Rubber Latex.'' FDA has subsequently retitled the special controls guidance document containing these information collection provisions to avoid confusion between the guidance established as a special control for condoms classified under 21 CFR 884.5300 by the final rule published elsewhere in this issue of the **Federal Register** and the November 2005 draft guidance, which remains available (but not for implementation) in conjunction with the pending proposal to amend another classification. No comments were received on the information collection provisions in response to the 60-day notice.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
35[2]	34	1,190	12	14,280
3[3]	34	102	12	1,224
Total				15,504

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Current manufacturers for year one.
[3] New Manufacturers for years two and three.

The reporting burden hours to respondents in the first year is a one-time burden of 14,280 hours. FDA expects three new manufacturers or repackagers to enter the market yearly, and collectively have a one-time burden of 1,224 hours. The number of respondents and prospective new manufacturers cited in table 1 of this document are based on FDA's database of premarket submissions. The remaining figures were derived from a study performed for FDA by Eastern Research Group, Inc., an economic consulting firm, to estimate the impact of the 1999 over-the-counter (OTC) human drug labeling requirements final rule (64 FR 13254, March 17, 1999). Because the packaging requirements for condoms are similar to those of many OTC drugs, we believe the burden to redesign the labeling for OTC drugs is an appropriate proxy for the estimated burden to redesign condom labeling. Cost estimates were adjusted to account for inflation using the producer price index.

The draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information under 21 CFR part 807 subpart E have been approved under OMB control no. 0910–0120; the collections of information under 21 CFR part 820 have been approved under OMB control no. 0910–0073; and the collections of information in part 801 (21 CFR part 801) have been approved under OMB control no. 0910–0485.

The collection of information under § 801.437 does not constitute a ''collection of information'' under the PRA. Rather, it is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

Dated: October 30, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–26828 Filed 11–7–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–E–0093]

Determination of Regulatory Review Period for Purposes of Patent Extension; IXEMPRA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for IXEMPRA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product IXEMPRA (ixabepilone). IXEMPRA in combination with capecitabine is indicated for the treatment of metastatic or locally advanced breast cancer in patients after failure of an anthracycline and a taxane. IXEMPRA as monotherapy is indicated for the treatment of metastatic or locally advanced breast cancer in patients after failure of an anthracycline, a taxane, and capecitabine. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for IXEMPRA (U.S. Patent No. 6,605,599) from Bristol Myers Squibb Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 22, 2008, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of IXEMPRA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for IXEMPRA is 3,002 days. Of this time, 2,818 days occurred during the testing phase of the regulatory review period, while 184 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: July 30, 1999. The applicant claims June 30, 1999, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 30, 1999, which was thirty days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: April 16, 2007. FDA has verified the applicant's claim that the new drug application (NDA) for Ixempra (NDA 22–065) was initially submitted on April 16, 2007.

3. *The date the application was approved*: October 16, 2007. FDA has verified the applicant's claim that NDA 22–065 was approved on October 16, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 854 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 9, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 11, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: October 20, 2008.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E8–26678 Filed 11–7–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–E–0229]

Determination of Regulatory Review Period for Purposes of Patent Extension; TYKERB

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TYKERB and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TYKERB (lapatinib). TYKERB is indicated in combination with capecitabine, for the treatment of patients with advanced or metastatic breast cancer whose tumors overexpress HER2 and who have received prior therapy including an anthracycline, a taxane, and trastuzumab. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TYKERB (U.S. Patent No. 6,713,485) from SmithKline Beecham Corp. (doing business as GlaxoSmithKline), and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 28, 2008, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TYKERB represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TYKERB is 2,260 days. Of this time, 2,078 days occurred during the testing phase of the regulatory review period, while 182 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: January 5, 2001. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 5, 2001.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: September 13, 2006. FDA has verified the applicant's claim that the new drug application (NDA) for TYKERB (NDA 22–059) was initially submitted on September 13, 2006.

3. *The date the application was approved*: March 13, 2007. FDA has verified the applicant's claim that NDA 22–059 was approved on March 13, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 628 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 9, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by May 11, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: October 20, 2008.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E8–26679 Filed 11–7–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Privacy Act of 1974; New OIG Privacy Act System of Records: Consolidated Data Repository

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed new Privacy Act System of Records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their system of records. Notice is hereby given that OIG is adding a new system of records entitled ''Consolidated Data Repository—HHS–OIG'' (09–90–1000).

DATES: *Effective Date:* This system of records will become effective without further notice on December 22, 2008, unless comments received on or before that date result in a contrary determination.

Comment Date: Comments on this new system of records will be considered if we receive them at the addresses provided below no later than 5 p.m. Eastern Standard Time on December 10, 2008.

ADDRESSES: In commenting, please reference file code 09–90–1000. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission. However, you may submit comments using one of the following three ways (no duplicates, please):

1. *Electronically.* You may submit electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* (Attachments should be in Microsoft Word, if possible.)

2. *By regular, express, or overnight mail.* You may mail your printed or written submissions to the following address: Office of Inspector General, Department of Health and Human Services, Attention: Marco Villagrana, Room 5541, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* You may deliver, by hand or courier, before the close of the comment period, your printed or written comments to the Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Because

access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619–1343.

Inspection of Public Comments: All comments received before the end of the comment period will be posted on *http://www.regulations.gov* for public viewing. Hard copies will also be available for public inspection at the Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, Monday through Friday, from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 401–2206.

FOR FURTHER INFORMATION CONTACT: Marco Villagrana, Department of Health & Human Services, Office of Inspector General, Office of External Affairs, (202) 401–2206; or Stephen Conway, Department of Health & Human Services, Office of Inspector General, Office of Audit Services, (617) 565–2946.

SUPPLEMENTARY INFORMATION: Under Section 2 of the Inspector General Act of 1978, as amended, OIG is required to conduct audits and investigations relating to programs and operations of the Department. In performing these required functions, OIG must collect, collate, and analyze claims information relating to services rendered to Medicare beneficiaries and Medicaid recipients. For this reason, OIG is establishing a new system of records which combines information from several existing HHS systems of records with information from State sources. This combined system of records is necessary for OIG to perform timely and independent audits, evaluations and inspections, and investigations of the Medicare and Medicaid programs.

In addition, in compliance with the ''Incident Reporting and Handling Requirements'' set forth in the Office of Management and Budget Memoranda 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, OIG is incorporating the routine use language into this new system of records as part of our normal System of Records Notice (SORN) review development process.

Description of the Proposed System of Records

Records from the Centers for Medicare & Medicaid Services and State Medicaid agencies will be incorporated into this new system of records. The new system of records will be created by including Medicare and Medicaid enrollment, eligibility, and claims data records on all beneficiaries and recipients. Data in the system of records will include names; Social Security numbers (SSNs); health insurance identification numbers; and claims information relating to inpatient, outpatient, physician/supplier, skilled nursing facilities, nursing home, hospice, home health, durable medical equipment, dental, prescription drug, and managed care.

Agency Policies, Procedures and Restrictions on the Routine Use

The Privacy Act permits OIG to disclose information outside HHS without an individual's consent if the information is to be used for a purpose that is compatible with the purposes for which the information was collected. Any such disclosure of data is known as a routine use. Accordingly, we are proposing to establish the following routine use disclosures of records maintained in the system:

1. Disclosure may be made to Federal, State, and local agencies for the purpose of better identifying the total current health care usage of the Medicare and Medicaid patient population.
2. Disclosure may be made to Federal, State, and local government agencies and national health organizations to assist in the development of programs that will be beneficial to claimants and to protect their rights under law and assure that they are receiving all benefits to which they are entitled.
3. Disclosure may be made to a Federal department or agency or to a contractor of a Federal department or agency in order to conduct Federal audits, evaluations and inspections, or investigations necessary to accomplish a statutory purpose of an agency. OIG must be able to disclose information for purposes needed to accomplish a statutory purpose of a Federal agency.
4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
5. In the event of litigation, information from the system of records may be disclosed to the Department of Justice, to a judicial or administrative tribunal, opposing counsel, and witnesses in the course of proceedings involving HHS, any HHS employee (where the matter pertains to the employee's official duties), or the United States, or any agency thereof where the litigation is likely to affect HHS, or HHS is a party or has an interest in the litigation and the use of the information is relevant and necessary to the litigation.
6. In the event that a system of records maintained by OIG to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.
7. In the event the that Department deems it desirable or necessary in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.
8. A record from this system of records may be disclosed to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.
9. The system of records may be disclosed to student volunteers and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records to perform their assigned agency functions.
10. A record may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

Safeguards

OIG has safeguards in place for authorized users and monitors users to ensure against unauthorized use. The system will conform to all applicable Federal laws and regulations and Federal, HHS, and OIG policies and standards as they relate to information security and data privacy.

Effects of the Proposed System of Records on Individual Rights

This system is established in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records notice.

OIG will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of beneficiaries and recipients whose data are maintained in the system. OIG will make disclosures from the proposed system in accordance with the Privacy Act. OIG does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals. This proposed change will not otherwise increase access to these records.

Dated: October 28, 2008.

Daniel R. Levinson,

Inspector General.

09–90–1000

SYSTEM NAME:

Consolidated Data Repository–HHS–OIG.

SYSTEM LOCATION(S):

Records will be maintained at the following computer site locations:

- HHS–OIG, 330 Independence Avenue, SW., Washington, DC 20201.
- HHS–OIG, N2–01–02, 7500 Security Boulevard, Baltimore, MD 21244.

And the following HHS–OIG Regional/Field Office locations:

- JFK Federal Building, Boston, MA 02203.
- J.K. Javits Federal Building, 26 Federal Plaza, New York, NY 10278.
- 150 South Independence Mall West, Public Ledger Building, Philadelphia, PA 19106.
- Atlanta Federal Center, Forsyth Street South, Atlanta, GA 30303.
- 8659 Baypine Road, Suite 203 Jacksonville, FL 32256.
- 233 North Michigan Avenue, Room 1360, Chicago, IL 60601.
- 3815 West Street, Joseph Hwy, Lansing, MI 48917.
- Galtier Plaza, 380 Jackson Street, Suite 727, St. Paul, MN 55101.
- 1124 Rickard Road, Suite C, Springfield, IL 62704.
- 1100 Commerce Street, Dallas, TX 75242.
- 1201 Walnut Street, Kansas City, MO 64106.
- 90 7th Street, San Francisco, CA 94103.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning Medicare beneficiaries and Medicaid recipients.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system will include Medicare beneficiaries' names, addresses, dates of birth, Medicare HIC numbers, SSNs, enrollment information and eligibility information, and claims information relating to the following types of services: Inpatient, skilled nursing facility, outpatient, physician/supplier, home health, hospice, durable medical equipment, prescription drug, and Medicare Advantage. The records will also include names, addresses, dates of birth, and SSNs on Medicaid recipients from State enrollment and eligibility files and claims information relating to the following types of services: Inpatient, long-term care, professional, dental, pharmacy, and Medicare cross-over. The National Provider Identification database and the Unique Provider Identification Number (UPIN) directory will be stored in this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (5 U.S.C. App.).

PURPOSE(S):

The purpose of this system of records is to conduct audits, evaluations and inspections, and investigations of the Medicare and Medicaid programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Privacy Act permits OIG to disclose information outside HHS without an individual's consent if the information is to be used for a purpose that is compatible with the purposes for which the information was collected. Any such disclosure of data is known as a routine use. Accordingly, we are proposing to establish the following routine use disclosures of records maintained in the system:

a. Disclosure may be made to Federal, State, and local agencies for the purpose of better identifying the total current health care usage of the Medicare and Medicaid patient population.

b. Disclosure may be made to Federal, State, and local government agencies and national health care organizations to assist in the development of programs that will be beneficial to claimants and to protect their rights under law and assure that they are receiving all benefits to which they are entitled.

c. Disclosure may be made to a Federal department or agency or to a contractor of a Federal department or agency to permit it to conduct Federal audits, evaluations and inspections, or investigations necessary to accomplish a statutory purpose of an agency. OIG must be able to disclose information for purposes needed to accomplish a statutory purpose of a Federal agency.

d. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

e. In the event of litigation, information from the system of records may be disclosed to the Department of Justice, to a judicial or administrative tribunal, opposing counsel, and witnesses, in the course of proceedings involving HHS, any HHS employee (where the matter pertains to the employee's official duties), or the United States, or any agency thereof where the litigation is likely to affect HHS, or HHS is a party or has an interest in the litigation and the use of the information is relevant and necessary to the litigation.

f. In the event that a system of records maintained by OIG to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

g. In the event that the Department deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

h. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

i. The system of records may be disclosed to student volunteers and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records to perform their assigned agency functions.

j. A record may be disclosed to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data are maintained on magnetic tape, disk, or laser optical media.

RETRIEVABILITY:

Records may be retrieved by name, name and one or more criteria (e.g., dates of birth, death, and service), SSN, Medicare HIC number, Medicaid Identification Number.

SAFEGUARDS:

The computers that process these data are protected by technical, managerial, and operational controls that follow Federal policies and guidelines. The computers are protected by a combination of physical security by being located in Federal offices; access controls such as passwords and identification numbers; and technical protections such as encryption, firewalls, and anti-virus software. These controls allow only authorized users to access the data.

Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational, and technical safeguards sufficient to protect the confidentiality, integrity, and availability of the information and information systems and to prevent unauthorized access. This system will conform to all applicable Federal laws and regulations and Federal, HHS, and OIG policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the eGovernment Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and the corresponding implementing regulations; and OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and OIG policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook; and OIG Information Security Handbooks.

RETENTION AND DISPOSAL:

These records may be maintained for an indefinite duration.

SYSTEM MANAGER AND ADDRESS:

The agency official responsible for the system policies and practices outlined above is: The Chief Information Officer, Office of Management and Policy, Office of Inspector General, Department of Health and Human Services, Wilbur J. Cohen Building, Room 5230, 330 Independence Avenue, SW., Washington, DC 20201.

NOTIFICATION PROCEDURE:

Any inquiries regarding these systems of records should be addressed to the System Manager. An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. (These notification and access procedures are in accordance with Department regulations (45 CFR 5b.6).)

RECORDS ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the official at the address in the System Manager and Address section above, and reasonably identify the record and specify the information to be contested and the corrective action sought with supporting justification. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Information may be obtained from the Centers for Medicare & Medicaid Services National Claims History (inpatient, outpatient, physician supplier, nursing home, hospice, home care, and durable medical equipment), Drug Data Processing System, Medicare Advantage and Prescription Drug system and State Medicaid claims and enrollment databases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E8–26725 Filed 11–7–08; 8:45 am]
BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; California Health Interview Survey Cancer Control Module (CHIS–CCM) 2009 (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 22, 2008 (Volume 73, No. 164, p. 49685) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: California Health Interview Survey Cancer Control Module (CHIS–CCM) 2009. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The NCI has sponsored four Cancer Control Modules in the California Health Interview Survey (CHIS), and will be sponsoring a fifth to be administered in 2009. CHIS is a telephone survey that collects population-based, standardized health-related data to assess California's progress in meeting Healthy People 2010 objectives for the nation and the state. The CHIS sample is designed to provide statistically reliable estimates statewide, for California counties, and for California's ethnically and racially diverse population. Initiated by the UCLA Center for Health Policy

Research, the California Department of Health Services, and the California Public Health Institute, the survey is funded by a number of public and private sources. It was first administered in 2001 to 55,428 adults and subsequently in 2003 to 42,043 adults, in 2005 to 43,020 adults, and in 2007 to 48,150 adults. These adults are a representative sample of California's non-institutionalized population living in households. CHIS 2009, the fifth bi-annual survey, is planned for administration to 55,000 adult Californians. This study will allow NCI to examine patterns and trends in cancer screening and follow-up, as well as to study other cancer-related topics such as tobacco control, diet, physical activity, and obesity. Additionally, CHIS is designed to be comparable to the National Health Interview Survey (NHIS) data in order to conduct comparative analyses. CHIS provides enhanced estimates for cancer risk factors and screening among racial/ethnic minority populations. *Frequency of Response:* Once. *Affected public:* Individuals or households. *Types of Respondents:* U.S. adults and adolescents (persons 12 years of age and older). The total annual burden hours requested are 3,436.93 (see Table A). The annualized cost to respondents is estimated at: $57,825. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE A—ANNUALIZED BURDEN ESTIMATES FOR CHIS 2009

Type of respondent	Form type	Number of respondents	Frequency of response	Average time per response (hours)	Annual hour burden
Adults	Adult Pilot	75	1	8/60	10
	Adult Survey	24,000	1	8/60	3,200
	Child Weight-Height Pilot	640	1	15/60	160
Adolescents	Adolescent Pilot	8	1	2/60	.27
	Adolescent Survey	2,000	1	2/60	66.67
Total		26,723			3,436.93

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Nancy Breen, Ph.D., Project Officer, National Cancer Institute, EPN 4005, 6130 Executive Boulevard MSC 7344, Bethesda, Maryland 20852–7344, or call non-toll free number 301–496–8500 or e-mail your request, including your address to: *breenn@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: October 31, 2008.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison Office, National Institutes of Health.

[FR Doc. E8–26633 Filed 11–7–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Eunice Kennedy Shriver National Institute of Child Health & Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: December 5, 2008.

Open: 8 a.m. to 11:30 a.m.

Agenda: A report by the Scientific Director, NICHD, on the status of the NICHD Division of Intramural Research.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

Closed: 11:30 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

Contact Person: Owen M. Rennert, MD, Scientific Director, National Institute of Child Health and Human Development, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892, (301) 496–2133, *rennerto@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/bsd/htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26637 Filed 11–7–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; RAPID.

Date: November 19, 2008.

Time: 2 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Enid Light, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608, 301–443–0322, *elight@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26638 Filed 11–7–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

The Statement of Organization, Functions, and Delegations of Authority

The Statement of Organization, Functions, and Delegations of Authority Part N, National Institutes of Health (NIH), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (40 FR 22859, May 27, 1975, as amended most recently at 73 FR 28124, May 15, 2008, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the reorganization of the Division of Program Coordination, Planning, and Strategic Initiatives, NIH.

Section N–B, Organization and Functions, under the heading "Division of Program Coordination, Planning, and Strategic Initiatives (NAW, formerly HNAW)," is amended as follows:

(1) Replace the current section NAW (*NAW, formerly HNAW*) with the following:

Division of Program Coordination, Planning, and Strategic Initiatives (NAW, formerly HNAW). (1) Identifies and reports on research that represents important areas of emerging scientific opportunities, rising public health challenges, or knowledge gaps that deserve special emphasis and would benefit from conducting or supporting additional research that involves collaboration between two or more Institutes and Centers (ICs), or would otherwise benefit from strategic coordination and planning; (2) coordinates research and activities related to AIDS, behavioral and social sciences, women's health, disease prevention, rare diseases, and dietary supplements; (3) uses resources (databases, analytic tools, and methodologies) and develops specifications for new resources, when needed, to conduct assessments based on NIH and other databases in support of portfolio analyses and priority setting in scientific areas of interest across NIH; (4) serves as a resource for portfolio management at the programmatic level; (5) ensures that NIH addresses important areas of emerging scientific opportunities and public health challenges effectively; and (6) plans, conducts, coordinates, and supports program evaluations, including, but not limited to, IC-specific program and project evaluations; trans-NIH evaluations, including Roadmap initiatives; and systematic assessments required by the Government Performance and Results Act (GPRA) and the OMB Program Assessment Rating Tool (PART).

(2) Insert the following under the heading *"Division of Program Coordination, Planning, and Strategic Initiatives (NAW, formerly HNAW)"*:

Office of Strategic Coordination (NAW6, formerly HNAW6). (1) Integrates information and develops recommendations to inform the agency's priority-setting and decision-making processes with respect to strategic initiatives; (2) addresses exceptional scientific opportunities and emerging public health needs; (3) provides the NIH Director with the information needed to allocate resources effectively for trans-NIH efforts; and (4) identifies trans-NIH initiatives for consideration and evaluation by both outside advisors and NIH leadership.

(3) Delete in their entirety the following headed paragraphs: the *"Office of Portfolio Analysis and Strategic Initiatives (NAW6, formerly HNAW6)"*; the *"Division of Resource Development and Analysis (NAW62, formerly HNAW62)"*; the *"Division of Strategic Coordination (NAW63, formerly HNAW63)"*; and the *"Division of Evaluation and Systematic Assessments (NAW64, formerly HNAW64)."*

Delegations of Authority: All delegations and redelegations of authority to officers and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect in such officers and employees or their successors, pending further redelegation.

Dated: October 31, 2008.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. E8–26635 Filed 11–7–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Citizenship and Immigration Services Ombudsman; DHS CIS Ombudsman Case Problem Submission

AGENCY: Office of the Citizenship and Immigration Services Ombudsman, DHS.

ACTION: 60-Day Notice and request for comments; Extension of an existing information collection 1601–0004, DHS Form 7001.

SUMMARY: The Department of Homeland Security, Office of the Citizenship and Immigration Services Ombudsman, submits this extension for the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The Office of the Citizenship and Immigration Services Ombudsman is soliciting comments concerning an extension to an existing information collection, DHS CIS Ombudsman Case Problem Submission, DHS Form 7001.

DATES: Comments are encouraged and will be accepted until January 9, 2009. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), Office of the CIS Ombudsman, Director of Communications, Mail Stop 1225, Washington, DC 20528–1225. Comments may also be submitted to DHS via facsimile to 202–272–8352, 202–357–0042 or via e-mail at *rfs.regs@dhs.gov or cisombudsman@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: the Department of Homeland Security (DHS), Office of the CIS Ombudsman, Director of Communications, Mail Stop 1225, Washington, DC 20528–1225, 202–357–8100.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security, Office of the Deputy Secretary, Office of the Citizenship and Immigration Services Ombudsman (CISOMB), collects information to receive and process correspondence received from individuals, employers, and their designated representatives to: (1) Assist individuals and employers in resolving problems during interactions with U.S. Citizenship and Immigration Services (USCIS); (2) identify areas in which individuals and employers have problems in dealing with USCIS; and (3) and to the extent possible, propose changes to mitigate problems as mandated by the Homeland Security Act of 2002, section 452.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, Office of the Citizenship and Immigration Services Ombudsman.

Title: DHS CIS Ombudsman Case Problem Submission.

OMB Number: 1601–0004.

Frequency: One-time response.

Affected Public: Individuals or Households. This information collection is necessary for CISOMB to identify problem areas, propose changes, and assist individuals experiencing problems during adjudication of an immigrant benefit with USCIS.

Number of Respondents: 2,600 respondents.

Estimated Time per Respondent: 1 hour per response.

Total Burden Hours: 2,600 annual burden hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Richard Mangogna,

Chief Information Officer.

[FR Doc. E8–26722 Filed 11–7–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0015]

Privacy Act of 1974; Department of Homeland Security Biographies and Awards System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 and as part of the Department of Homeland Security's ongoing effort to review and update legacy system of record notices, the Department of Homeland Security proposes to consolidate four legacy record systems: Treasury/CS.032 Biographical Files (Headquarters), October 18, 2001, FEMA/EX–1 Biographies, September 7, 1990, FEMA/EX–2 President's and Director's Award Nominees, September 7, 1990, and DOT/CG 671 Biographical Statement, April 11, 2000, into one Department-wide system of records. The Department of Homeland Security also proposes to partially consolidate Treasury/USSS.008 Public Affairs Record System, August 28, 2001, into this new record system. This system will allow the Department of Homeland Security to collect and maintain the biographical information of Department of Homeland Security employees and other individuals, as well as Departmental award recipients who are not employed by the Department of Homeland Security. Departmental award recipients who are Department of Homeland Security employees are covered under OPM/GOVT–2 Performance File System Records. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect the Department's biographies record systems. This consolidated system, titled Biographies and Awards, will be included in the Department's inventory of record systems.

DATES: Written comments must be submitted on or before December 10, 2008. This new system will be effective December 10, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0015 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 1–866–466–5370.

• *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

• *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

• *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, Section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS) and its components and offices have relied on preexisting Privacy Act system of records notices for the collection and maintenance of records that concern DHS's biographical and award records.

As part of its efforts to streamline and consolidate its Privacy Act records systems, DHS is establishing a new agency-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS biographical and award records. This will ensure that all components of DHS follow the same privacy rules for collecting and handling biographical and award records. The collection and maintenance of this information will assist DHS in managing Departmental biographies in order to ensure information is provided to the public in a usable, accurate format.

In accordance with the Privacy Act of 1974 and as part of DHS's ongoing effort to review and update legacy system of record notices, DHS proposes to consolidate four legacy record systems: Treasury/CS.032 Biographical Files (Headquarters) (66 FR 52984 October 18, 2001), FEMA/EX–1 Biographies (55 FR 37182 September 7, 1990), FEMA/EX–2 President's and Director's Award Nominees (55 FR 37182 September 7, 1990), and DOT/CG 671 Biographical Statement (65 FR 19475 April 11, 2000) into one DHS-wide system of records. DHS also proposes to partially consolidate Treasury/USSS.008 Public Affairs Record System (66 FR 45362 August 28, 2001) into this new record system. This system will allow DHS to collect and maintain the biographical information of DHS employees and other individuals, as well as Departmental award recipients who are not employed by DHS. Departmental award recipients who are DHS employees are covered under OPM/GOVT–2 Performance File System Records. Categories of individuals, categories of records, and the routine uses of these legacy system of records notices have been consolidated and updated to better reflect the Department's biographies record systems. This consolidated system, titled Biographies and Awards, will be included in the Department's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires that each agency publish in the **Federal Register** a description denoting the type and character of each system of records in order to make agency recordkeeping practices transparent, to notify individuals about the use of their records, and to assist the individual to more easily find files within the agency. Below is a description of the Biographies and Awards System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to the Congress.

SYSTEM OF RECORDS:

DHS/ALL–011.

SYSTEM NAME:

Department of Homeland Security Biographies and Awards.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at several Headquarters locations and in component offices of DHS, in both Washington, DC and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual including DHS senior leadership, past and present, whose biographical information is collected and distributed by DHS. This system includes President's, Secretary's, and Component Leadership's award recipients and nominees who are not DHS employees. Award recipients who are DHS employees are covered under OPM/GOVT–2 Performance File System Records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

• Individual's name;
• Individual's date of birth;
• Individual's place of birth;
• Individual's photo;
• Individual's work history and experience;
• Individual's education;
• Individual's military experience, if applicable;
• Individual's civic duties and previous awards;
• Individual's hometown;
• Type of award received/nominated for (*e.g.*, President's, Secretary's, or Component Leadership's);
• Name of the nominating official;
• Nomination materials including a summary of the individual's outstanding accomplishments, distinguished service, or extraordinary valor to make he/she eligible for an award and published factual account of the nominee's accomplishments;
• Individual's other relevant information that may be collected and distributed to the public.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101; The Homeland Security Act of 2002, Public Law 107–296.

PURPOSE(S):

The purpose of this system is to collect biographical and award information of individuals, primarily

DHS senior leadership and President's, Secretary's, and Component Leadership's award recipients and nominees, in order to provide information to the media and the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. any employee of DHS in his/her official capacity;

3. any employee of DHS in his/her individual capacity where Department of Justice or DHS has agreed to represent the employee; or

4. the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions, or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties.

H. To audiences attending a particular event when the biographies of speakers are used as background in introductions or other informational material.

I. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Data may be retrieved by an individual's name and type of award.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permission.

RETENTION AND DISPOSAL:

Records at the executive level (*e.g.* Secretary, Deputy Secretary, and Chief of Staff) are permanent. These records are cut off when superseded or obsolete, and are transferred to the National Archives one year after cut off. Records at the non-executive level are temporary. These records are cut off when superseded or obsolete, and are destroyed or deleted upon cutoff or when no longer needed for administrative purposes. General award records, including recommendations, approved nominations, correspondence, reports, and related handbooks pertaining to agency-sponsored cash and non-cash awards are retained for two years and then destroyed. Lists of agency award nominees and winners are destroyed when superseded or obsolete.

SYSTEM MANAGER AND ADDRESS:

For Headquarters components of DHS, the System Manager is the Director of Departmental Disclosure, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under ''contacts.''

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or the component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

• An explanation of why you believe the Department would have information on you,

• Identify which component(s) of the Department you believe may have the information about you,

• Specify when you believe the records would have been created,

• Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,

• If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual employee, personnel officers, and co-workers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 28, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–26689 Filed 11–7–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2008–0023]

Privacy Act of 1974; Department of Homeland Security Correspondence Records System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is giving notice that it proposes to consolidate two legacy record systems: Treasury/CS.056 Congressional and Public Correspondence File, October 18, 2001, FEMA/ADM–1 Office Files, September 7, 1990, into a new record system, titled Department of Homeland Security Correspondence Records. The Department of Homeland Security also proposes to partially consolidate Treasury/USSS.008 Public Affairs Record System, August 28, 2001, into this new record system. This system will allow the Department of Homeland Security to collect and maintain incoming information and responses to inquiries, comments, or complaints made to the Department. Categories of individuals, categories of records, and the routine uses of these system of records notices have been consolidated and updated to better reflect the Department's correspondence record systems. This consolidated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 10, 2008. This new system will be effective December 10, 2008.

ADDRESSES: You may submit comments, identified by docket number DHS–2008–0023 by one of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Fax:* 1–866–466–5370.

• *Mail:* Hugo Teufel III, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

• *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change and may be read at *http://www.regulations.gov*, including any personal information provided.

• *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Hugo Teufel III (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the savings clause in the Homeland Security Act of 2002, Public Law 107–296, section 1512, 116 Stat. 2310 (November 25, 2002), the Department of Homeland Security (DHS) and its components and offices have relied on preexisting Privacy Act systems of records notices for the collection and maintenance of records that concern correspondence records.

As part of its efforts to streamline and consolidate its Privacy Act record systems, DHS is establishing a new agency-wide system of records under the Privacy Act (5 U.S.C. 552a) for DHS correspondence records. This will ensure that all components of DHS follow the same privacy rules for collecting, maintaining, and distributing correspondence records.

In accordance with the Privacy Act of 1974, DHS is giving notice that it proposes to consolidate two legacy record systems: Treasury/CS.056 Congressional and Public Correspondence File (66 FR 52984 October 18, 2001), FEMA/ADM–1 Office Files (55 FR 37182 September 7, 1990) into a new record system, titled Department of Homeland Security Correspondence Records. DHS also proposes to partially consolidate Treasury/USSS.008 Public Affairs Record System (66 FR 45362 August 28, 2001) into this new record system. This system will allow DHS to collect and maintain incoming information and responses to inquiries, comments, or complaints made to the Department. Categories of individuals, categories of records, and the routine uses of these system of records notices have been consolidated and updated to better reflect the Department's correspondence record systems. This consolidated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and legal permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals in locating such files within the agency. Below is the description of the DHS Correspondence Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget (OMB) and to Congress.

SYSTEM OF RECORDS

DHS/ALL–016

SYSTEM NAME:

Department of Homeland Security Correspondence Records

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at several Headquarters locations and in component offices of DHS, in both Washington, DC and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who submit inquiries, complaints, comments, or other correspondence to DHS, and the responding party on behalf of DHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name;
- Individual's address;
- Individual's e-mail address;
- Web form information (e.g., IP addresses);
- Who the complaint, compliment, comment or issue is about;
- Incoming correspondence;
- DHS's reply;
- Responder's name on behalf of DHS;
- Additional unsolicited personal information provided by the individual; and
- Other related materials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; The Federal Records Act, 44 U.S.C. 3101.

PURPOSE(S):

The purpose of this system is to manage incoming information and responses to inquiries, comments, or complaints made to DHS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee of DHS in his/her official capacity;
3. Any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or
4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and
3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To another Federal agency to refer correspondence or respond to correspondence given the nature of the complaint, compliment, comment or issue.

I. To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective action, or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD-ROM.

RETRIEVABILITY:

Records may be retrieved by individual name and date of correspondence.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Executive level records are permanent, and files are cut off annually and transferred to the National Archives and Records Administration 10 years after cut off date, in accordance with National Archives and Records Administration General Schedule N1–563–07–13–4 (Pending NARA Approval). Non-executive level records are destroyed after 10 years, in accordance with a pending National Archives and Records Administration General Records Schedule.

SYSTEM MANAGER AND ADDRESS:

For Headquarters of DHS, the System Manager is the Director of Departmental Disclosure, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under ''contacts.''

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters' or the component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0550, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Identify which component(s) of the Department you believe may have the information about you,
- Specify when you believe the records would have been created,
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information used to compile records in this system is taken from all sources of incoming correspondence and response correspondence by DHS. A non-exclusive list of correspondence sources may include members of the general public, unions, trade organizations, non-profits, business or governmental entities, including the news media and congressional offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 28, 2008.

Hugo Teufel III,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. E8–26691 Filed 11–7–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–1077]

National Maritime Security Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of committee re-establishment.

SUMMARY: The Secretary of Homeland Security is re-establishing the National Maritime Security Advisory Committee (NMSAC) under the authority of 6 U.S.C. Section 451, as a discretionary committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

ADDRESSES: You may request a copy of the charter by one of the following methods:

- *E-mail: NMSAC@uscg.mil*, Subject line: NMSAC Charter,
- *Fax:* 202–372–1905, ATTN: NMSAC DFO/EA, please provide name, mailing address and telephone and fax numbers for whom the charter is to be sent.
- *Mail:* Send written requests for charter to: USCG–NMSAC Designated Federal Officer (DFO), CG–5441, Room 5302, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001, please provide name, mailing address and telephone and fax numbers for whom the charter is to be sent.

Internet: To download a copy visit the NMSAC Web site at *http://homeport.uscg.mil/nmsac.*

FOR FURTHER INFORMATION CONTACT: Ryan F. Owens, Assistant to DFO of NMSAC; at (202) 372–1108.

SUPPLEMENTARY INFORMATION:

Establishment of the National Maritime Security Advisory Committee. The Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463), governs the establishment of committees by Federal agencies.

The Committee will advise, consult with, report to, and make recommendations to the Secretary on matters relating to national maritime security. Such matters may include, but not be limited to:

- Developing a national strategy and policy to provide for efficient, coordinated and effective action to deter and minimize damage from maritime related transportation security incidents;
- Recommending actions required to meet current and future security threats to ports, vessels, facilities, waterways and their associated inter-modal transportation connections and critical infrastructure;
- Promoting international cooperation and multilateral solutions to maritime security issues;
- Addressing security issues and concerns brought to the Committee by segments of the maritime transportation industry, or other port and waterway stakeholders; and,
- Examining such other matters, related to those above, that the Secretary may charge the Committee with addressing.

FACA requires advisory committees to meet at least yearly. However, we anticipate that this Committee will meet more frequently. Subcommittees may also meet between meetings of the parent Committee. Most meetings will be held at Coast Guard Headquarters in Washington, DC, but some meetings may be held at locations around the country.

Dated: October 30, 2008.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Office of Port and Facility Activities.

[FR Doc. E8–26668 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1800–DR]

Illinois; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Illinois (FEMA–1800–DR), dated October 3, 2008, and related determinations.

DATES: *Effective Date:* October 31, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Illinois is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 3, 2008.

Woodford County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–26710 Filed 11–7–08; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Entry and Immediate Delivery Application

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0024. Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Entry and Immediate Delivery Application. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 51833) on September 5, 2008, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before December 10, 2008.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Entry and Immediate Delivery Application.

OMB Number: 1651–0024.

Form Number: CBP Form-3461 and Form-3461 Alternate.

Abstract: CBP Form CBP–3461 and Form-3461 Alternate are used by importers to provide CBP with the necessary information in order to examine and release imported cargo for entry into the United States.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (with change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 13,324.

Estimated Number of Responses: 18,654,229.

Estimated Average Time per Response: 9 minutes.

Estimated Total Annual Burden Hours: 2,774,743.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: October 29, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–26723 Filed 11–7–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Prior Disclosure Regulations

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0074.

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Prior Disclosure Regulations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (73 FR 51833) on September 5, 2008, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before December 10, 2008.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Prior Disclosure Regulations.

OMB Number: 1651–0074.

Form Number: N/A.

Abstract: This collection of information is required to implement a provision of the Customs Modernization portion of the North American Free Trade Implementation Act concerning prior disclosure by a person of a violation of law committed by that person involving the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence, pursuant to 19 U.S.C. 1592(c)(4), as amended.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 3,500.

Estimated Time per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 3,500.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: October 29, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–26724 Filed 11–7–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5159–FA–01]

Announcement of Funding Awards for the Public Housing Neighborhood Networks Program for Fiscal Year 2007

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Fiscal Year (FY) 2007 Notice of Funding Availability (NOFA) for the Public Housing Neighborhood Networks Program funding for FY2007. This announcement contains the consolidated names and addresses of award recipients selected for funding based on the rating and ranking of all applications.

FOR FURTHER INFORMATION CONTACT: For questions concerning the FY2007 Public Housing Neighborhood Networks awards, contact the Office of Public and Indian Housing's Grants Management Center, Acting Director, J. David Reeves, Department of Housing and Urban Development, Washington, DC, telephone (202) 475–8906. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The authority for the $10,000,000 in one-year budget authority for Public Housing Neighborhood Networks program is found in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, FY 2007 (Pub. L. 110–5). The allocation of housing assistance budget authority is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213(d) of the Housing and Community Development Act of 1974, as amended.

This program is intended to provide grants to public housing authorities (PHAs) to update and expand existing Neighborhood Networks community technology centers, or establish new Neighborhood Networks centers. These centers offer comprehensive services designed to help public housing residents achieve long-term economic self-sufficiency.

The FY2007 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** NOFA published on March 13, 2007 (71 FR 3382). Applications were scored based on the selection criteria in that NOFA and funding selections made based on the rating and ranking of applications.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 40 awards made under the Public Housing Neighborhood Networks program competition.

Dated: October 31, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

Recipient	Address/city/state/zip code	Amount
Housing Authority of the City of Prichard	4559 St. Stephens Road, Eight Mile, AL 36613.	300,000
Mobile Housing Board	151 South Claiborne Street, Mobile, AL 36602.	250,000
San Diego Housing Commission	1122 Broadway, Suite 300, San Diego, CA 92101.	300,000
Housing Authority of the City of Pueblo	1414 North Santa Fe Avenue, 10th Floor, Pueblo, CO 81003.	400,000
Housing Authority of the City of Meriden	22 Church Street, Meriden, CT 06451	150,000
Housing Authority of the City of Fort Myers	4224 Michigan Avenue, Fort Myers, FL 33916.	150,000
Carrollton Housing Authority	1 Roop Street, Carrollton, GA 30112	150,000
Gainesville Housing Authority	1750 Pearl Nix Parkway, Gainesville, GA 30503.	300,000
Housing Authority of the City of Rock Island	227-21st Street, Rock Island, IL 61201	150,000
Knox County Housing Authority	255 West Tompkins, Galesburg, IL 61401	300,000
Rockford Housing Authority	223 South Winnebago Street, Rockford, IL 61102.	400,000
Campbellsville Housing & Redevelopment Authority	400 Ingram Avenue, Campbellsville, KY 42718.	150,000
Housing Authority of Madisonville	211 Pride Avenue, Madisonville, KY 42431.	150,000
Lebanon Housing Authority	101 Hamilton Heights, Lebanon, KY 40033.	150,000
Louisville Metro Housing Authority	420 South Eighth Street, Louisville, KY 40203.	250,000
Housing Authority of Baltimore City	417 East Fayette Street, Baltimore, MD 21202.	599,592
Housing Authority of the City of Frederick	209 Madison Street, Frederick, MD 21701	150,000
Housing Opportunities Commission of Montgomery County MD	10400 Detrick Avenue, Kensington, MD 20895.	400,000
Port Huron Housing Commission	905 Seventh Street, Port Huron, MI 48060	300,000
Public Housing Agency of the City of Saint Paul	555 North Wabasha Street, Suite 400, Saint Paul, MN 55102–1602.	250,000
Housing Authority of St. Louis County	8865 Natural Bridge Road, St. Louis, MO 63121.	150,000
Public Housing Authority of Butte	220 Curtis Street, Butte, MT 59701	150,000
Housing of the City of Durham	P.O. Box 1726, 330 East Main Street, Durham, NC 27701.	400,000

Recipient	Address/city/state/zip code	Amount
Buffalo Municipal Housing Authority	300 Perry Street, Buffalo, NY, 14204	250,000
Municipal Housing Authority of the City of Schenectady	375 Broadway, Schenectady, NY 12305	200,000
New York City Housing Authority	250 Broadway, New York, NY 10007	600,000
Syracuse Housing Authority	516 Burt Street, Syracuse, NY 13202	200,000
Portage Metropolitan Housing Authority	2832 State Route 59, Ravenna, OH 44266	300,000
Springfield Metropolitan Housing Authority	101 West High Street, Springfield, OH 45502.	300,000
Chester Housing Authority	35 East 5th Street, Chester, PA 19013–4401.	400,000
Housing Authority of the City of Providence	100 Broad Street, Providence, RI 02903	250,000
Chattanooga Housing Authority	801 North Holtzclaw Avenue, Chattanooga, TN 37404.	400,000
Memphis Housing Authority	700 Adams Avenue, Memphis, TN 38105	250,000
Housing Authority of the City of Temple	P.O. Box 1326, 700 West Calhoun, Temple, TX 76503–1326.	150,000
Houston Housing Authority	2640 Fountain View Drive, Suite 235E, Houston, TX 77057.	250,000
Danville Redevelopment and Housing Authority	135 Jones Crossing, Danville, VA 24541	300,000
Burlington Housing Authority	65 Main Street, Burlington, VT 05401	148,669
Housing Authority of the City of Bremerton	110 Russell Road, Bremerton, WA 98312	150,000
King County Housing Authority	600 Andover Park West, Tukwila, WA 98188.	250,000
Housing Authority of the City of Milwaukee	809 North Broadway, Milwaukee, WI 53202.	250,000

[FR Doc. E8–26659 Filed 11–7–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5100–FA–17]

Announcement of Funding Awards for the Resident Opportunity and Self-Sufficiency (ROSS)—Elderly and Persons with Disabilities for Fiscal Year 2007

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Fiscal Year (FY) 2007 Notice of Funding Availability (NOFA) for the Resident Opportunity and Self-Sufficiency Elderly/Persons with Disabilities Program funding for FY2007. This announcement contains the consolidated names and addresses of award recipients selected for funding based on the rating and ranking of all applications and the allocation of funding available for each state.

FOR FURTHER INFORMATION CONTACT: For questions concerning the FY2007 ROSS Elderly/Persons with Disabilities awards, contact the Office of Public and Indian Housing's Grants Management Center, Acting Director, J. David Reeves, Department of Housing and Urban Development, Washington, DC, telephone (202) 475–8906. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the ''800'' TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The authority for the $20,000,000 in one-year budget authority for ROSS Elderly/Persons with Disabilities program is found in the Departments of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, FY 2007 (Pub. L. 110–5). The allocation of housing assistance budget authority is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213(d) of the Housing and Community Development Act of 1974, as amended.

This program is intended to promote the development of local strategies to coordinate the use of assistance under the ROSS program with public and private resources to enable participating families to achieve economic independence and self-sufficiency. A Public and Indian Housing Program Coordinator assures that program participants are linked to the supportive services they need to achieve self-sufficiency.

The FY2007 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** NOFA published on March 13, 2007 (71 FR 3382). Applications were scored based on the selection criteria in that NOFA and funding selections made based on the rating and ranking of applications within each state.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 62 awards made under the ROSS Elderly/Persons with Disabilities Program competition.

Dated: October 31, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix A Fiscal Year 2007 Funding Awards for the Ross Elderly/Persons with Disabilities Program

Recipient	Address	City	State	Zip code	Amount
Tlingit-Haida Regional Housing Authority.	5446 Jenkins Drive	Juneau	AK	99801	$231,700
Mobile Housing Board	151 South Claiborne Street	Mobile	AL	36602	350,000
Prichard Housing Authority	4559 St. Stephens Road	Eight Mile	AL	36613	250,000

Recipient	Address	City	State	Zip code	Amount
Lutheran Social Services of the Southwest.	5049 East Broadway, Suite 102	Tucson	AZ	85711	375,000
Moenkopi Senior Center Inc.	P.O. Box 2139 North East Hopi Hsg	Tuba City	AZ	86045	193,446
Area Housing Authority of the County of Ventura.	1400 West Hillcrest Drive	Newbury Park	CA	91320	250,000
Housing Authority of the City of Los Angeles.	2600 Wilshire Boulevard, Third Floor	Los Angeles	CA	90057	313,101
Housing Authority of the County of Merced.	405 U Street	Merced	CA	95340	250,000
Housing Authority of the County of San Diego.	3989 Ruffin Road	San Diego	CA	92123	235,093
Northern California Presbyterian Homes and Services, Inc.	1525 Post Street	San Francisco	CA	94109	375,000
The Housing Authority of the County of Los Angeles.	2 Coral Circle	Monterey Park	CA	91755–7404	450,000
Boulder Housing Partners (dba) Housing Auth. City of Boulder.	4800 Broadway	Boulder	CO	80304	249,444
District of Columbia Housing Authority	1133 North Capitol Street, Northeast	Washington	DC	20002	450,000
Housing Authority of Lakeland	430 Hartsell Avenue	Lakeland	FL	33815	250,000
Palatka Housing Authority	400 North 15th Street	Palatka	FL	32178	209,960
Housing Authority of Columbus, Georgia.	P.O. Box 630 1000 Wynnton Road	Columbus	GA	31902–0630	350,000
Housing Authority of the City of College Park, Georgia.	2000 Princeton Avenue	College Park	GA	30337	250,000
Macon Housing Authority	2015 Felton Avenue	Macon	GA	31201	250,000
Northwest Georgia Housing Authority	800 North Fifth Avenue	Rome	GA	30162	350,000
Coeur d'Alene Tribal Housing Authority	1005 8th Street	Plummer	ID	83851	250,000
Housing Authority of Henry County	100 Fairview Junction	Kewanee	IL	61443	128,228
Housing Authority of the City of Muncie	409 East First Street	Muncie	IN	47302	250,000
Campbellsville Housing & Redevelopment Authority.	400 Ingram Avenue	Campbellsville	KY	42718	250,000
ElderServ, Inc.	411 East Muhammad Ali Boulevard	Louisville	KY	40202	250,000
Housing Authority of Covington	2300 Madison Avenue	Covington	KY	41014	250,000
Housing Authority of Martin	P.O. Box 806	Martin	KY	41649	250,000
Housing Authority of Maysville	600 Clark Street	Maysville	KY	41056	250,000
Housing Authority of Williamsburg	600 Brush Arbor Road	Williamsburg	KY	40769	250,000
Lebanon Housing Authority	101 Hamilton Heights	Lebanon	KY	40033	250,000
Jennings Housing Authority	P.O. Box 921 300 Bangle Drive	Jennings	LA	70546	250,000
Springfield Housing Authority	25 Saab Court	Springfield	MA	01104	350,000
Easter Seals Greater Washington-Baltimore Region, Inc.	4041 Powder Mill Road, Suite 100	Calverton	MD	20705–3106	375,000
Aroostook Family Investment Center	159 Bennett Drive, Suite 7	Caribou	ME	04736–2049	375,000
Westbrook Housing Authority	30 Liza Harmon Drive	Westbrook	ME	4092	233,306
City of Manistee Housing Commission	237 6th Avenue	Manistee	MI	49660	250,000
Clinton Housing Authority	7 Bradshaw Drive	Clinton	MO	64735	175,744
Sedalia Housing Authority	500 Welch	Sedalia	MO	65301	118,699
Charlotte Housing Authority	1301 South Boulevard	Charlotte	NC	28214	450,000
Housing Authority of the City of High Point.	500 East Russell Avenue	High Point	NC	27260	349,810
The Housing Authority of the City of Durham.	P.O. Box 1726 330 East Main Street	Durham	NC	27701	350,000
Fargo Housing and Redevelopment Authority.	325 Broadway	Fargo	ND	58102	349,973
Housing Authority of the City of Camden.	2120 Watson Street, 2nd Floor	Camden	NJ	8105	238,799
Housing Authority of the City of Rahway.	165 East Grant Avenue	Rahway	NJ	7065	250,000
City Harvest, Inc.	575 Eighth Avenue, 4th Floor	New York	NY	10018	295,218
New Rochelle Municipal Housing Authority.	50 Sickles Avenue	New Rochelle	NY	10801–3416	250,000
Newark Housing Authority	P.O. Box 108 200 Driving Park Circle	Newark	NY	14513–0108	97,391
Saratoga Springs Housing Authority	1 South Federal Street	Saratoga Springs	NY	12866	250,000
The Municipal Housing Authority for the City of Yonkers.	P.O. Box 35	Yonkers	NY	10710–0035	350,000
Community Support Services Inc.	150 Cross Street	Akron	OH	44311	374,207
Portage Metropolitan Housing Authority	2832 State Route 59	Ravenna	OH	44266	250,000
Delaware County Housing Authority	1855 Constitution Avenue	Woodlyn	PA	19094	250,000
Housing Authority of the County of Luzerne.	250 First Avenue	Kingston	PA	18704–5103	350,000
Central Falls Housing Authority	30 Washington Street	Central Falls	RI	2863	210,260
North Charleston Housing Authority	2170 Ashley Phosphate Road, Suite 700.	North Charleston	SC	29406	250,000
Kingsport Housing & Redevelopment Authority.	P.O. Box 44	Kingsport	TN	37662	249,804

Recipient	Address	City	State	Zip code	Amount
Housing Authority of the City of Belton, Texas.	P.O. Box 708 715 Saunders	Temple	TX	76503	62,500
Bristol Redevelopment and Housing Authority.	809 Edmond Street	Bristol	VA	24201	250,000
Roanoke Redevelopment and Housing Authority.	2624 Salem Turnpike, Northwest	Roanoke	VA	24017–0359	350,000
Community Psychiatric Clinic	4319 Stone Way North	Seattle	WA	98103–7490	300,000
Friends of Housing Corporation	9141 West Lisbon Avenue	Milwaukee	WI	53222	375,000
Lac Courte Oreilles Band of Lake Superior Chippewa Indians.	13394 W. Trepania Road	Hayward	WI	54843	185,860
S.E.T. Ministry, Inc.	2977 North 50th Street	Milwaukee	WI	53210	250,000

[FR Doc. E8–26658 Filed 11–7–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5100–FA–18]

Announcement of Funding Awards for the Resident Opportunity and Self-Sufficiency (ROSS)—Family and Homeownership Program for Fiscal Year 2007

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of Funding Awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the Fiscal Year (FY) 2007 Notice of Funding Availability (NOFA) for the Resident Opportunity and Self-Sufficiency Family and Homeownership Program funding for FY2007. This announcement contains the consolidated names and addresses of award recipients selected for funding based on the rating and ranking of all applications and the allocation of funding available for each state.

FOR FURTHER INFORMATION CONTACT: For questions concerning the FY2007 ROSS Family and Homeownership awards, contact the Office of Public and Indian Housing's Grants Management Center, Acting Director, J. David Reeves, Department of Housing and Urban Development, Washington, DC, telephone (202) 475–8906. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the ''800'' TTY number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The authority for the $30,000,000 in one-year budget authority for ROSS Family and Homeownership program is found in the Departments of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, FY 2007 (Pub. L. 110–5). The allocation of housing assistance budget authority is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213(d) of the Housing and Community Development Act of 1974, as amended.

This program is intended to promote the development of local strategies to coordinate the use of assistance under the ROSS program with public and private resources to enable participating families to achieve economic independence and self-sufficiency. A Public and Indian Housing Program Coordinator assures that program participants are linked to the supportive services they need to achieve self-sufficiency.

The FY2007 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** NOFA published on March 13, 2007 (71 FR 3382). Applications were scored based on the selection criteria in that NOFA and funding selections made based on the rating and ranking of applications within each state.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 109 awards made under the ROSS Family and Homeownership Program competition.

Dated: October 31, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

APPENDIX A—FISCAL YEAR 2007 FUNDING AWARDS FOR THE ROSS FAMILY AND HOMEOWNERSHIP PROGRAM

Recipient	Address/city/state/zip code	Amount
Alaska Housing Finance Corporation	P.O. Box 101020, Anchorage, AK 99510–1020.	$309,510
Aleutian Housing Authority	4000 Old Seward Highway, Suite 202, Anchorage, AK 99503–6079.	200,000
Tlingit-Haida Regional Housing Authority	P.O. Box 32237, Juneau, AK 99801	249,975
Mobile Housing Board	151 South Claiborne Street, Mobile, AL 36602.	500,000
Prichard Housing Authority	4559 St. Stephens Road, Eight Mile, AL 36613.	250,000
The Housing Authority of the City of Huntsville	200 Washington Street, Huntsville, AL 35804–0486.	350,000
Tuscaloosa Housing Authority	2808 10th Avenue, Tuscaloosa, AL 35403	350,000
City of Phoenix Housing Department	251 West Washington, 4th Floor, Phoenix, AZ 85003.	350,000
White Mountain Apache Housing Authority	P.O. Box 1270, 50 West Chinatown Road, Whiteriver, AZ 85941.	349,999

APPENDIX A—FISCAL YEAR 2007 FUNDING AWARDS FOR THE ROSS FAMILY AND HOMEOWNERSHIP PROGRAM—Continued

Recipient	Address/city/state/zip code	Amount
Housing Authority County of Fresno	P.O. Box 11985, 1331 Fulton Mall, Fresno, CA 93776–1985.	350,000
Housing Authority of the City of Fresno	P.O. Box 11985, 1331 Fulton Mall, Fresno, CA 93776–1985.	350,000
Housing Authority of the City of Los Angeles	2600 Wilshire Boulevard Third Floor, Los Angeles, CA 90057.	500,000
Housing Authority of the City of Oxnard	435 South 'D' Street, Oxnard, CA 93030	250,000
Housing Authority of the County of Kern	601–24th Street, Bakersfield, CA 93301	249,932
Housing Authority of the County of San Diego	3989 Ruffin Road, San Diego, CA 92123–1815.	250,000
Imperial Valley Housing Authority	1401 D Street, Brawley, CA 92227	250,000
Housing Authority of the City & County of Denver	777 Grant Street, Denver, CO 80203	350,000
Housing Authority of the City of Pueblo	1414 North Santa Fe Avenue, 10th Floor, Pueblo, CO 81003.	350,000
Housing Authority of the City of Meriden	22 Church Street, Meriden, CT 06451	250,000
Housing Authority of the City of New Haven	P.O. Box 1912, 360 Orange Street, New Haven, CT 06509–1912.	348,223
ACORN Institute	739 8th Street, SE, Washington, DC 20003.	124,324
Housing Authority of Lakeland	430 Hartsell Avenue, Lakeland, FL 33815	250,000
Housing Authority of the City of Fort Myers	4224 Michigan, Fort Myers, FL 33916	250,000
Housing Authority of the City of Tampa	1514 Union Street, Tampa, FL 33607	350,000
Palatka Housing Authority	400 North 15th Street, Palatka, FL 32178	210,000
West Palm Beach Housing Authority	1715 Division Avenue, West Palm Beach, FL 33407.	250,000
Housing Authority of the City of College Park, Georgia	2000 Princeton Avenue, College Park, GA 30337.	250,000
Housing Authority of the City of Cordele	401 South 10th Street, Cordele, GA 31015	250,000
Macon Housing Authority	2015 Felton Avenue, Macon, GA 31201	350,000
Northwest Georgia Housing Authority	800 North Fifth Avenue, Rome, GA 30162	350,000
Parents And Children Together	1485 Linapuni Street, Suite 105, Honolulu, HI 96819.	375,000
Eastern Iowa Regional Housing Authority	3999 Pennsylvania Avenue, Suite 200, Dubuque, IA 52002.	204,000
Chicago Housing Authority	60 East Van Buren, Chicago, IL 60605	999,593
Rock Island Housing Authority	227 21st Street, Rock Island, IL 61201	249,432
Rockford Housing Authority	223 South Winnebago Street, Rockford, IL 61102.	350,000
Housing Authority of the City of Muncie	409 East First Street, Muncie, IN 47302	250,000
Indianapolis Housing Agency	1919 North Meridian Street, Indianapolis, IN 46202.	350,000
Lawrence-Douglas County Housing Authority	1600 Haskell Avenue, Lawrence, KS 66044.	250,000
Campbellsville Housing & Redevelopment Authority	400 Ingram Avenue, Campbellsville, KY 42718.	250,000
Housing Authority of Covington	2300 Madison Avenue, Covington, KY 41014.	250,000
Housing Authority of Martin	P.O. Box 806, 109 Raymond Griffith Drive, #1101, Martin, KY 41649.	250,000
Housing Authority of Maysville	600 Clark Street, Maysville, KY 41056	250,000
Lebanon Housing Authority	101 Hamilton Heights, Lebanon, KY 40033.	250,000
Louisville Metro Housing Authority	420 South Eighth Street, Louisville, KY 40203.	500,000
Cambridge Housing Authority	675 Massachusetts Avenue, Cambridge, MA 02139.	350,000
Holyoke Housing Authority	475 Maple Street, Suite One, Holyoke, MA 01040.	250,000
Quincy Housing Authority	80 Clay Street, Quincy, MA 02170–2799	250,000
Housing Authority of Baltimore City	417 East Fayette Street, Baltimore, MD 21202.	731,429
Housing Authority of the City of Frederick	209 Madison Street, Frederick, MD 21701	250,000
Housing Opportunities Commission of Montgomery County	10400 Detrick Avenue, Kensington, MD 20895.	350,000
Housing Authority of the City of Brewer	15 Colonial Circle, Suite 1, Brewer, ME 04412.	250,000
Portland Housing Authority	14 Baxter Boulevard, Portland, ME 04101	250,000
Manistee Housing Commission	237 6th Avenue, Manistee, MI 49660	250,000
Port Huron Housing Commission	905 Seventh Street, Port Huron, MI 48060	249,000
Housing Authority of St. Louis County	8865 Natural Bridge Road, St. Louis, MO 63121.	250,000

APPENDIX A—FISCAL YEAR 2007 FUNDING AWARDS FOR THE ROSS FAMILY AND HOMEOWNERSHIP PROGRAM—Continued

Recipient	Address/city/state/zip code	Amount
St. Louis Housing Authority	4100 Lindell Boulevard, St. Louis, MO 63108.	350,000
Natchez Housing Authority	2 Auburn Avenue, Natchez, MS 39120	250,000
The Housing Authority of the City of Meridian	2425 E Street, Meridian, MS 39301	350,000
Northern Cheyenne Tribe	P.O. Box 128, 600 Cheyenne Avenue, Lame Deer, MT 59043–0128.	168,000
City of Concord Housing Department	P.O Box 308, 283 Harold Goodman Circle, Concord, NC 28026–0308.	250,000
Housing Authority of the City of Greenville	1103 Broad Street, Greenville, NC 27834	247,724
Statesville Housing Authority	110 West Allison Street, Statesville, NC 28677.	250,000
The Housing Authority of the City of Durham	P.O. Box 1726, 330 East Main Street, Durham, NC 27701.	350,000
Troy Housing Authority	408 South Main Street, Troy, NC 27371	135,210
Fargo Housing and Redevelopment Authority	325 Broadway, Fargo, ND 58102	249,990
Housing Authority of the City of Omaha	540 South 27th Street, Omaha, NE 68106–1549.	349,387
Kearney Housing Agency	2715 Avenue I OFC, Kearney, NE 68847	47,384
Atlantic City Housing Authority	227 North Vermont Avenue, 17th Floor, P.O. Box 1258, Atlantic City, NJ 08401.	250,000
City of Long Branch Housing Authority	P.O. Box 337, Garfield Court Administrative Office, Long Branch, NJ 07740.	250,000
Housing Authority of the City of Camden	2120 Watson Street, 2nd Floor, Camden, NJ 08105.	349,860
Housing Authority of the City of Paterson	60 Van Houten Street, Paterson, NJ 07505.	250,000
ACORN Tenant Union Tenant Organizing Project	915 Charlston Boulevard, Las Vegas, NV 89104–1513.	124,965
Municipal Housing Authority of the City of Schenectady	375 Broadway, Schenectady, NY 12305	250,000
New Rochelle Municipal Housing Authority	50 Sickles Avenue, New Rochelle, NY 10801–3416.	250,000
New York City Housing Authority	250 Broadway, New York, NY 10007	998,775
Syracuse Housing Authority	516 Burt Street, Syracuse, NY 13202	350,000
ACORN Institute	329 North 20th Street, Columbus, OH 43203.	189,171
Akron Metropolitan Housing Authority	100 West Cedar Street, Akron, OH 44307	500,000
Dayton Metropolitan Housing Authority	P.O. Box 8750, 400 Wayne Avenue, Dayton, OH 45401–8750.	222,660
Oklahoma City Housing Authority	1700 Northeast Fourth Street, Oklahoma City, OK 73117.	350,000
Umatilla Reservation Housing Authority	51 Umatilla Loop, Pendleton, OR 97801	250,000
Hazelton Housing Authority	320 West Mine Street, Hazelton, PA 18201.	247,020
Housing Authority of the County of Beaver	300 State Street, Beaver, PA 15009	350,000
Philadelphia Housing Authority	12 South 23rd Street, 6th Floor, Philadelphia, PA 19103.	974,866
Puerto Rico Community Foundation	P.O. Box 70362, San Juan, PR 00936–8362.	250,000
The Housing Authority of the City of Providence	100 Broad Street, Providence, RI 02903	350,000
North Charleston Housing Authority	2170 Ashley Phosphate Road, Suite 700, North Charleston, SC 29406.	250,000
The Housing Authority of the City of Greenville, SC	511 Augusta Street, Greenville, SC 29605	250,000
The Lakota Fund	P.O. Box 340 (The Trade Center, Suite 201), Kyle, SD 57752.	250,000
Jackson Housing Authority	125 Preston Street, Jackson, TN 38301	320,000
Kingsport Housing & Redevelopment Authority	P.O. Box 44, Kingsport, TN 37662	250,000
Memphis Housing Authority	700 Adams Avenue, Memphis, TN 38105	350,000
Metropolitan Development and Housing Agency	701 South Sixth Street, Nashville, TN 37206.	500,000
Housing Authority of the City of Austin	P.O. Box 6159, Austin, TX 78762–6159	349,978
Housing Authority of the City of Belton, Texas	P.O. Box 708, 715 Saunders, Temple, TX 76513.	111,240
Housing Authority of the City of Temple	P.O. Box 1326, 700 West Calhoun, Temple, TX 76503–1326.	250,000
The Housing Authority of the City of Dallas, Texas (DHA)	3939 North Hampton Road, Dallas, TX, 75212.	500,000
The Housing Authority of the City of Fort Worth	1201 East 13th Street, Fort Worth, TX 76102.	350,000
Bristol Redevelopment and Housing Authority	809 Edmond Street, Bristol, VA 24201	250,000
Danville Redevelopment and Housing Authority	135 Jones Crossing, Danville, VA 24541	250,000

APPENDIX A—FISCAL YEAR 2007 FUNDING AWARDS FOR THE ROSS FAMILY AND HOMEOWNERSHIP PROGRAM—Continued

Recipient	Address/city/state/zip code	Amount
Pleasant View Tenant Association, Incorporated	101 Pleasant View Avenue, Danville, VA 24541–3432.	125,000
Roanoke Redevelopment and Housing Authority	2624 Salem Turnpike, Northwest, Roanoke, VA 24017–3059.	350,000
Housing Authority of the City of Tacoma	902 South L Street, Tacoma, WA 98405 ..	350,000
Housing Authority of the City of Vancouver	2500 Main Street, Vancouver, WA, 98660	249,975
King County Housing Authority	600 Andover Park West, Tukwila, WA, 98188–3326.	350,000
Kitsap County Consolidated Housing Authority	9307 Bayshore Drive, Northwest, Silverdale, WA 98383.	250,000
Seattle Housing Authority	P.O. Box 19028, 120 Sixth Avenue North, Seattle, WA 98109–1028.	349,940
Housing Authority of the City of Milwaukee	809 North Broadway, Milwaukee, WI 53202.	350,000
The Huntington West Virginia Housing Authority	300 Seventh Avenue West, Huntington, WV 25701.	250,000

[FR Doc. E8–26657 Filed 11–7–08; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 5263–N–01]

Notice of Certain Operating Cost Adjustment Factors for 2009

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice establishes, for 2009, operating cost adjustment factors (OCAFs). OCAFs are annual factors used to adjust Section 8 rents renewed under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA).

DATES: *Effective Date:* February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Judith May, Director, Office of Evaluation, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone number 202–402–3239 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. OCAFs

Section 514(e)(2) of MAHRA requires HUD to establish guidelines for rent adjustments based on an OCAF. The statute requiring HUD to establish OCAFs for LIHPRHA projects and projects with contract renewals or adjustments under section 524 of MAHRA is similar in wording and intent. HUD has therefore developed a single factor to be applied uniformly to all projects utilizing OCAFs as the method by which renewal rents are established or adjusted.

LIHPRHA projects are low-income housing projects insured by the Federal Housing Administration (FHA). LIHPRHA projects are primarily low-income housing projects insured under section 221(d)(3) below-market interest rate (BMR) and section 236 of the National Housing Act, respectively. Both categories of projects have low-income use restrictions that have been extended beyond the 20-year period specified in the original documents, and both categories of projects also receive assistance under section 8 of the U.S. Housing Act of 1937 to support the continued low-income use. The OCAF rent adjustments are designed to cover increases in project operating costs. Contract rents are adjusted by applying the OCAF to that portion of the rent attributable to operating expenses and making adjustments for increases or decreases in non-operating costs, such as debt service.

Additionally, MAHRA gives HUD broad discretion in setting OCAFs—referring, for example, in sections 524(a)(4)(C)(i), 524(b)(1)(A), 524(b)(3)(A) and 524(c)(1) simply to "an operating cost adjustment factor established by the Secretary." The sole limitation to this grant of authority is a specific requirement in each of the foregoing provisions that application of an OCAF "shall not result in a negative adjustment." OCAFs are to be applied uniformly to all projects utilizing OCAFs as the method by which rents are established or adjusted. OCAFs are applied to project contract rent less debt service.

HUD calculates the average, per unit, change in operating costs (excluding debt service and bad debt expense), by state, for all projects submitting consecutive valid financial statement reports with fiscal year end dates between July 31, 2006 and July 31, 2008. The projects comprise all multifamily properties excluding nursing homes and hospitals. Furthermore, data for projects with unusually high or low expenses due to unusual circumstances were deleted from the analysis. These changes in actual operating costs experienced by properties within HUD's portfolio have become the FY 2009 OCAFs.

OCAFs continue to be published at the state level. States are the lowest level of geographical aggregation at which there are enough projects to permit statistically reliable analysis. Additionally, no data were available for the Western Pacific Islands. Data for Hawaii was therefore used to generate OCAFs for these areas.

II. MAHRA and LIHPRHA OCAF Procedures

MAHRA, as amended, created the Mark-to-Market Program to reduce the cost of federal housing assistance, enhance HUD's administration of such assistance, and ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without restructuring plans under the Mark-to-Market Program, including projects that are not eligible for a restructuring plan and those for which the owner does not request such a plan. Renewals must be at rents not exceeding comparable market rents except for certain projects. As an example, for Section 8 Moderate

Rehabilitation projects, other than single room occupancy projects (SROs) under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: (1) The existing rents under the expiring contract, as adjusted by the OCAF; (2) fair market rents (less any amounts allowed for tenant-purchased utilities); or (3) comparable market rents for the market area.

LIHPRHA (see, in particular, section 222(a)(2)(G)(i), 12 U.S.C. 4112(a)(2)(G) and the regulations at 24 CFR 248.145(a)(9)) requires that future rent adjustments for LIHPRHA projects be made by applying an annual factor to be determined by HUD to the portion of project rent attributable to operating expenses for the project and, where the owner is a priority purchaser, to the portion of project rent attributable to project oversight costs.

III. Findings and Certifications

Environmental Impact

This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Dated: October 28, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix

Operating Cost Adjustment Factors for 2009

U.S. Average	4.3%
Alabama	3.0%
Alaska	12.4
Arizona	5.0
Arkansas	3.7
California	4.7
Colorado	3.7
Connecticut	5.7
Delaware	2.0
District of Columbia	5.7
Florida	4.9
Georgia	5.5
Hawaii	7.9%

U.S. Average	4.3%
Idaho	4.7%
Illinois	3.9
Indiana	6.1
Iowa	3.5
Kansas	6.1
Kentucky	4.9
Louisiana	5.7
Maine	5.0
Maryland	4.5
Massachusetts	3.7
Michigan	3.3
Minnesota	5.5
Mississippi	8.0
Missouri	3.7
Montana	4.3
Nebraska	4.4
Nevada	2.4
New Hampshire	3.3
New Jersey	2.7
New Mexico	6.1
New York	3.9
North Carolina	2.8
North Dakota	2.4
Ohio	3.8
Oklahoma	4.0
Oregon	7.9
Pacific Islands	7.9
Pennsylvania	5.2
Puerto Rico	2.9
Rhode Island	5.0
South Carolina	5.4
South Dakota	5.2
Tennessee	4.8
Texas	3.4
Utah	4.0
Vermont	2.8
Virgin Islands	0.0
Virginia	3.4
Washington	2.3
West Virginia	2.6
Wisconsin	3.9
Wyoming	3.5

[FR Doc. E8–26655 Filed 11–7–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

Abbreviated Final Environmental Impact Statement/Comprehensive Management Plan; Ala Kahakai National Historic Trail, Hawaii County, HI; Notice of Availability

Summary: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (CEQ) (40 CFR Part 1500–1508), the National Park Service, Department of the Interior, has prepared an abbreviated final environmental impact statement for the proposed Comprehensive Management Plan for the Ala Kahakai National Historic Trail (NHT) located on the island of Hawaii. Three CMP alternatives are identified and analyzed relative both to NPS planning requirements and to the public's concerns and issues identified during the scoping and public involvement process (in addition to a no-action alternative, an environmentally preferred alternative is also identified). Each alternative presents administrative, management, and partnership strategies for resource protection and preservation, education and interpretation, visitor uses and facilities, and long-term operations and management of the national trail. The potential environmental consequences of all the alternatives, and appropriate mitigation strategies, are identified and analyzed.

Background: On April 4, 2003, the **Federal Register** published the Notice of Intent to prepare an environmental impact statement (EIS) for the comprehensive management plan (CMP) for the Ala Kahakai National Historic Trail. The initial scoping phase was designed to proactively elicit public issues, concerns, and other relevant information deemed necessary to address during the overall planning. A total of 200 people representing the general public, private landowners, trail advocacy groups, Native Hawaiian organizations, and state, county, and federal agencies participated overall. Several public meetings around the island were hosted (about 25 comment forms were returned to the trail office). In addition, the NPS planning team met with numerous individuals, community groups, private landowners, and government agency representatives to understand their concerns and visions for the Ala Kahakai NHT. The scoping phase extended through June 28, 2003.

The NPS encouraged public involvement during two additional phases of the EIS process. In the second phase, the NPS engaged the public in developing preliminary alternatives intended to address the specific issues and concerns that surfaced during the public scoping. Nine public workshops were held around the island of Hawaii.

The third phase of involvement afforded the opportunity for public review of the Draft EIS/CMP, notice of which appeared in the **Federal Register** on October 26, 2007. Government entities and the public were invited to submit comments by regular mail, e-mail, fax, and online. In addition, the NPS held seven public meetings on the island of Hawaii in November 2007 to provide further opportunity to learn about the proposed plan and to offer comments; over 90 people attended these meetings. The formal comment period closed on December 31, 2007, although the NPS received several comments during the next two weeks.

Aside from approximately 83 individual statements recorded on the meeting flip charts and 21 comment sheets completed at the meetings, the NPS received 40 written communications. No comments received from interested individuals and groups, area residents and businesses, and public agencies required the NPS to add other alternatives, significantly alter existing alternatives, or make changes to the impact analysis of the effect of any alternative. Thus, an abbreviated format is used to fully document all responses to comments in the Final CMP/EIS in compliance with the CEQ implementing regulations (40 CFR 1503.4[c]) for the National Environmental Policy Act.

Proposed Plan and Alternatives: Alternative A, the No Action Alternative, assumes that existing programs, facilities, staffing, and funding would generally continue at their current levels. The Ala Kahakai NHT would consist of trail segments within the four national parks through which it passes and only a few other segments (e.g., on state lands). As recommended in the Ala Kahakai National Trail Study and Environmental Impact Statement, January 1998, (Feasibility Study) on which national trail status was based, a continuous trail would be the goal but would not be implemented, even in the long-term. However, an auto tour would be completed that would lead visitors to 18 sites associated with the trail. Recreation along the trail and interpretation of its history would generally be limited to these sites.

Alternative B proposes the completion of a single continuous trail comprised of unaltered or verified ancient and historic portions of the ala loa (coastal trail around the island) linked as needed by later pre-1892 trails, pathways, and modern connector trails. Within the planning period of 15 years, the goal would be to complete the linear trail within the priority zone from Kawaihae through Pu'uhonua o Honaunau National Park to Ho'okena and to protect other segments outside of that area as feasible. In the long-term, cultural and natural resources along the entire trail tread and agreed upon adjacent areas would be protected and interpreted to the public. The NPS would administer the trail, but management outside of the national parks would remain with the land managing agency or landowner. The NPS would offer technical assistance and limited financial assistance to these management partners. Partnerships with state and county agencies, community organizations, and private individuals would help protect trail resources and provide appropriate trail user services. An auto tour would be completed as in *Alternative A*.

Alternative C, the NPS proposed action and the ''environmentally preferred'' alternative, is based on the traditional Hawaiian trail system in which multiple trail alignments within the ahupua'a (mountain to sea land division) are integral to land use and stewardship. The linear trail would be protected as in *Alternative B*, but on publicly-owned lands the Ala Kahakai NHT includes inland portions of ala loa or other historic trails that run lateral to the shoreline and would be connected to ancient or historic mauka-makai (mountain to sea) trails that would have traditionally been part of the ahupua'a system. As with *Alternative B*, during the 15-year planning period, the priority zone from Kawaihae to Pu'uhonua o Honaunau National Park through Ho'okena would be the focus of administration and management, but sections outside of that zone would protected as feasible. Through an agreement, the state of Hawaii could convey to the NPS a less-than-fee management interest in trail segments that are state-owned under the Highways Act of 1892 within the Ala Kahakai NHT corridor. The NPS would then be responsible for managing these segments and federal law would fully apply. However, in cooperation with the NPS, local communities of the ahupua'a would be encouraged to take responsibility for trail management using the traditional Hawaiian principles of land management and stewardship. The Ala Kahakai Trail Association would be expected to be robust enough play a major part in trail management, promotion, and funding. An auto tour would be completed similarly as in the other alternatives.

Copies: The abbreviated Final EIS/CMP is now available, and may be obtained by contacting the Superintendent, Ala Kahakai NHT, 73–4786 Kanalani Street, #14, Kailua-Kona, HI 96740 or by telephone at 808–326–6012. Copies of the Draft EIS/CMP are available, if needed. The Final EIS/CMP may also be reviewed electronically via the Web site *http://parkplanning.nps.gov/alka* or at area libraries.

Decision Process: Following the release of the abbreviated Final EIS/CMP, a Record of Decision will be prepared not sooner than 30 days after the EPA has published its notice of filing of the document in the **Federal Register**. Announcement of the approved CMP would be similarly published. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region, National Park Service. Subsequently, the official responsible for implementing the approved CMP would be the Superintendent, Ala Kahakai National Historic Trail.

Dated: June 13, 2008.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

Editorial Note: This document was received in the Office of the Federal Register on November 11, 2008.

[FR Doc. E8–26702 Filed 11–7–08; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the General Management Plan (GMP) for Fort Donelson National Battlefield, TN

SUMMARY: Pursuant to 42 U.S.C. 4332(2)(C) of the National Environmental Policy Act of 1969 and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-Making) the NPS is preparing an EIS for a GMP for Fort Donelson National Battlefield, Tennessee.

The GMP will prescribe the resource conditions and visitor experiences that are to be achieved and maintained in the national battlefield over the next 20 years. The clarification of what must be achieved according to law and policy will be based on review of the battlefield's purpose, significance, special mandates, and the body of laws and policies directing park management. Based on determinations of desired conditions, the GMP will outline the types of resource management activities, visitor activities, and development that would be appropriate in the future. A range of reasonable management alternatives will be developed through this planning process and will include, at a minimum, a no-action alternative and a preferred alternative.

Issues to be addressed will include but are not limited to the following: Management of Fort Henry and Fort Heiman properties and tracts adjacent to the boundary that were recently added to the national battlefield; potential impacts from outside development including the Highway 79 realignment; and the inventory and preservation of cultural and natural resources.

DATES: Comments should be submitted no later than 60 days after publication of this notice. Public meetings regarding the GMP will be held throughout the planning process. Specific dates, times, and locations will be made available in the local media, on the NPS Planning, Environment and Public Comment (PEPC) Web site: (*http://parkplanning.nps.gov/fodo*), or by contacting the Superintendent of Fort Donelson National Battlefield.

ADDRESSES: Information on the planning process and copies of newsletters will be available from the office of the Superintendent, P.O. Box 434, Dover, Tennessee 37058–0434.

SUPPLEMENTARY INFORMATION: Public and agency involvement will be solicited at several key steps in the planning process including initial scoping, alternatives development, and the draft plan.

If you wish to comment on any issues associated with the plan, you may submit your comments to the planning team by any one of several methods. You may mail comments to Fort Donelson National Battlefield, P.O. Box 434, Dover, Tennessee 37058–0434. You may also comment electronically at *http://parkplanning.nps.gov/fodo*. Finally, you may hand-deliver comments to the national battlefield headquarters located in Dover, Tennessee. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: The authority for publishing this notice is contained in 40 CFR 1506.6.

FOR FURTHER INFORMATION CONTACT: Superintendent Steven McCoy, Fort Donelson National Battlefield, P.O. Box 434, Dover, Tennessee 37058–0434; telephone: 931–232–5348. The responsible official for this EIS is the Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: September 8, 2008.

David Vela,

Regional Director, Southeast Region.

[FR Doc. E8–26704 Filed 11–7–08; 8:45 am]

BILLING CODE 4310–LN–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 25, 2008. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th Floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 25, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ALABAMA

Lee County

Sunny Slope, 1031 S. College St., Auburn, 08001116

Mobile County

ILA Hall, 505 Martin Luther King Jr. Ave., Mobile, 08001117

KENTUCKY

Fayette County

New Zion Historic District, 4972 Newtown Pike through 5200 Newtown Pike, and 103–135 New Zion Rd., Georgetown, 08001118

Green County

Creel, Elijah, House, (Green County MRA) E. Columbia Ave., Greensburg, 08001123

Greenup County

Wurtland Union Church, 325 Wurtland Ave., Wurtland, 08001119

Jefferson County

Stoddard Johnston Elementary School, 2301 Bradley Ave., Louisville, 08001122

Marshall County

Cherokee State Park, 542 Kenlake Rd., Hardin, 08001120

Pulaski County

Battle of Mill Springs Historic Areas (Boundary Increase), Four discontinuous areas; two along KY 235 and two along the Cumberland River, Nancy, 08001121

Scott County

New Zion Historic District, 4972 Newtown Pike through 5200 Newtown Pike, and 103–135 New Zion Rd., Georgetown, 08001118

Wayne County

Battle of Mill Springs Historic Areas (Boundary Increase), Four discontinuous areas; two along KY 235 and two along the Cumberland River, Mill Springs, 08001121

MARYLAND

Baltimore Independent city

Park Circle Historic District, Roughly bounded by Overview Ave., Shirley Ave., Cottage Ave., and Henry G. Parks Jr. Circle, Baltimore, 08001124

Cecil County

Gilpin's Falls Covered Bridge, MD Rt. 272, North East, 08001125

MASSACHUSETTS

Dukes County

Tashmoo Springs Pumping Station, 325 W. Spring St., Tisbury, 08001126

Franklin County

Leverett Center Historic District, Amherst, Montague, Depot, and Shutesbury Rds., Leverett, 08001127

Norfolk County

Wollaston Congregational Church, (Quincy MRA) 47–57 Lincoln Ave., Quincy, 08001128

MISSOURI

Pettis County

Jones, Henry, Farmstead, 17000 Hwy. EE, Sedalia, 08001129

St. Louis Independent city

More Automobile Company Building, (Auto-Related Resources of St. Louis, Missouri MPS) 2801 Locust St., St. Louis, 08001130

Peabody Coal Company National Headquarters, 301 N. Memorial Dr., St. Louis, 08001131

NEBRASKA

Butler County

St. Mary of the Assumption Catholic Church, School and Grottoes, 336 W. Pine St., Dwight, 08001132

Hamilton County

United Brethren Church, 1103 K St., Aurora, 08001133

Madison County

First United Presbyterian Church, 104 E. 4th St., Madison, 08001134

NEW MEXICO

Bernalillo County

Relief Model Map of the State of New Mexico, (New Deal in New Mexico MPS) 600 2nd St., NW, Albuquerque, 08001135

Roosevelt County

Roosevelt County Courthouse, (New Deal in New Mexico MPS) 100 W. 2nd St., Portales, 08001136

San Miguel County

Park Springs Ranch Headquarters Complex, 11.6 mi. E. of jct. U.S. 84 and NM 451, Dilia, 08001137

Union County

Gate, Fence and Hollow Tree Shelter, 320 Oak St., Clayton, 08001138

NEW YORK

Erie County

Annunciation School, 257 Lafayette Ave., Buffalo, 08001139
Baptist Church of Springville, The, 37 N. Buffalo St., Springville, 08001140
Buffalo Tennis and Squash Club, 314 Elmwood Ave., Buffalo, 08001141
Curtiss, Harlow C., Building, 204–210 Franklin St., Buffalo, 08001142
Richmond Avenue Methodist-Episcopal Church, 525 W. Ferry St., Buffalo, 08001143

Franklin County

Loon Lake Mountain Fire Observation Station, (Fire Observation Stations of New York State Forest Preserve MPS) Summit of Loon Lake Mountain, Franklin, 08001144

Niagara County

Niagara, The, 201 Rainbow Blvd., Niagara Falls, 08001145

Rockland County

Piermont Railroad Station, 50 Ash St., Piermont, 08001146

Washington County

Home Farm, 591 Co. Rt. 18, East Whitehall, 08001147

OKLAHOMA

Comanche County

Douglass School, 102 E. Gore Blvd., Lawton, 08001148

Grady County

Silver City Cemetery, 6/10th of a mile from Section line on S. side of section 22, T10N, R6W I.M., Tuttle, 08001149

Oklahoma County

Kivlehen House, 525 N. Jackson St., Edmond, 08001150

Osage County

Woolaroc Ranch Historic District, Eight mi. E. of the jct. of St. Hwys. 11 and 123, Barnsdall, 08001151

Tulsa County

Mayo Building, 420 S. Main St., Tulsa, 08001152

Woodward County

Woodward Theater, The, 818 Main, Woodward, 08001153

UTAH

Salt Lake County

Best, Amanda Conk, House, 3622 S. 1100, E., Millcreek, 08001154
Oquirrh School, 350 S. 400, E., Salt Lake City, 08001156

Uintah County

Bank of Vernal, (Vernal—Maeser, Utah MPS) 3 W. Main St., Vernal, 08001155

WASHINGTON

Chelan County

Beebe Springs, Address Restricted, Chelan Falls, 08001157

King County

Nuclear Reactor Building, 3785 Jefferson Rd., NE, Seattle, 08001158

WISCONSIN

Oconto County

Citizens State Bank of Gillett, 137 E. Main St., Gillett, 08001159

[FR Doc. E8–26648 Filed 11–7–08; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36CFR63.5), this notice, through publication of the information included herein, is to appraise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to the National Register of Historic Places from October 1 to October 10, 2008. This notice also includes cumulative Federal Determinations of Eligibility for FY 2008.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St. NW., Washington, DC 20240; in person (by appointment), 1201 Eye St. NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov*.

Dated: October 29, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

ALABAMA, MOBILE COUNTY, United States Court House and Custom House, 113 St. Joseph St., Mobile, 08000964, LISTED, 10/08/08
ARKANSAS, JACKSON COUNTY, Erwin Auxiliary Army Airfield, NE. of AR 14 and Jackson Rd. 917 jct., Newport vicinity, 08000954, LISTED, 10/02/08 (World War II Home Front Efforts in Arkansas)
ARKANSAS, SEBASTIAN COUNTY, Greenwood Presbyterian Church, 103 W. Denver St., Greenwood, 08000955, LISTED, 10/01/08
COLORADO, CHAFFEE COUNTY, Heister House, 102 Poncha Blvd., Salida, 08000965, LISTED, 10/08/08
DISTRICT OF COLUMBIA, DISTRICT OF COLUMBIA STATE EQUIVALENT, Slayton, William L., House, 3411 Ordway St., NW, Washington DC, 08000956, LISTED, 10/02/08
FLORIDA, PUTNAM COUNTY State Road 20 Billboard, FL Rt. 20, Between Interlachen and Hawthorne, 65009960, *DETERMINED ELIGIBLE, 8/27/08
FLORIDA, ST. JOHNS COUNTY, Stanbury Cottage, 232 St. George St., St. Augustine, 08000966, LISTED, 10/08/08
GEORGIA, FULTON COUNTY, General Electric Company Repair Shop and Warehouse, 488 Glenn Ave., Fulton, 08000968, LISTED, 10/10/08
KENTUCKY, HARRISON COUNTY, Site 2, KY 356, Cynthiana, 65009935, *DETERMINED ELIGIBLE, 12/11/07
MISSOURI, JACKSON COUNTY, Aines Farm Dairy Building, 3110–30 Gillham Rd., Kansas City, 08000960, LISTED, 10/01/08
NEW JERSEY, CAPE MAY COUNTY, U.S. Life-Saving Station No. 35, 11617 2nd Ave., Stone Harbor Borough, 08000970, LISTED, 10/08/08
NEW JERSEY, SOMERSET COUNTY, Vail-Trust House, 225 Greenbrook Rd., Green Brook, 08000972, LISTED, 10/07/08
NEW JERSEY, WARREN COUNTY, Phillipsburg Commercial Historic District, 29–169 S. Main St., 60–178 S. Main St., 3 Hudson St., 9 and 12–30 Morris St./Main St., 7–11, 17, and 21–27 Union Sq., Phillipsburg Town, 08000973, LISTED, 10/08/08
NORTH CAROLINA, BUNCOMBE COUNTY, Proximity Park Historic District, Roughly bounded by Macon Ave., Howland Rd., Woodlink Rd., Charlotte St., and Sunset Trail, Asheville, 08000974, LISTED, 10/08/08
OHIO, HAMILTON COUNTY, Sedamsville River Road Historic District, 2449–2734 River Rd., 309–317 Mt. Hope and 604 Mt. Echo, Cincinnati, 08000975, LISTED, 10/10/08
OREGON, LANE COUNTY, Eugene Civic Stadium, 2077 Willamette St., Eugene, 08000183, LISTED, 10/06/08
TEXAS, HALL COUNTY, Hall County Courthouse, 512 W. Main, Memphis, 08000961, LISTED, 10/01/08

TEXAS, HIDALGO COUNTY, M and J Nelson Building, 300–308 S. 14th St., McAllen, 08000962, LISTED, 10/01/08
UTAH, SALT LAKE COUNTY, Fisher, Albert, Mansion and Carriage House, 1206 West 200 South, Salt Lake City, 83004675, LISTED, 10/08/08
UTAH, SALT LAKE COUNTY, Salt Lake City Main Library, 209 E. 500 S. St., Salt Lake City, 65009955, *DETERMINED ELIGIBLE, 01/15/08
WISCONSIN, COLUMBIA COUNTY, Lodi Downtown Historic District, 133, 137–139, 143, 147, 157, and 161–165 S. Main St., Lodi, 08000980, DETERMINED ELIGIBLE, 10/10/08
WISCONSIN, ASHLAND COUNTY, MOONLIGHT shipwreck, Address Restricted, La Pointe vicinity, 08000979, LISTED, 10/01/08 (Great Lakes Shipwreck Sites of Wisconsin MPS)
WISCONSIN, RICHLAND COUNTY, Shadewald II Mound Group, Address Restricted, Town of Eagle vicinity, 08000963, LISTED, 10/02/08 (Late Woodland Stage in Archeological Region 8 MPS)
WISCONSIN, VILAS COUNTY, Everett Resort, The, 1269 Everett Rd., Washington, 08000982, LISTED, 10/08/08
WYOMING, CONVERSE COUNTY, Hotel LaBonte, 206 Walnut St., Douglas, 08001003, LISTED, 10/10/08

*Denotes FEDERAL DETERMINATION OF ELIGIBILITY

[FR Doc. E8–26645 Filed 11–7–08; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on August 7, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TeleManagement Forum (''the Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Defense Science and Technology Organization, Edinburgh, South Australia, AUSTRALIA; Acando AS, NORWAY; acuma solutions limited, Manchester, UNITED KINGDOM; ADTRAN, Inc., Huntsville, AL; AGGAROS, Barcelona, SPAIN; Agora Data Systems, McLean, VA; Aiphion Corporation, Princeton Junction, NJ; Amartus, Dun Laoghaire, IRELAND; Anglo African Outsourcing Ltd., Quatre Bornes, Plaine Wilhems, REPUBLIC OF MAURITIUS; Auspice Corporation, Waltham, MA; Austar Entertainment, Ultimo, NSW, AUSTRALIA; Bahrain Telecommunications Company (Batelco), Manama, BAHRAIN; BESHARA GROUP, Salmiyah, KUWAIT; Bharti Airtel Ltd., Sector 39, Gurgaon, Haryana, INDIA; Bizitek, Istanbul, TURKEY; Booz Allen Hamilton, Inc., McLean, VA; BTC Mobile (PTY) Ltd., Gaborone, BOTSWANA; celsius technologies, Charleroi, BELGIUM; Center of Excellence, Abu Dhabi, UNITED ARAB EMIRATES; Centre for Development of Advanced Computing (CDAC), Vellayambalam, Thiruvananthapuram, INDIA; codecentric GmbH, Solingen, GERMANY; Critical Software, SA, Coimbra, PORTUGAL; Crown Interactive Limited, London, UNITED KINGDOM; Datentechnik Austria GmbH & Co KG, Wien, AUSTRIA; dave milham consulting, Woodbridge, Suffolk, UNITED KINGDOM; Deloitte, London, UNITED KINGDOM; eBIZ mobility, Bet Shemesh, ISRAEL; ECtel, Rosh Ha'ayin, ISRAEL; Effortel Russia, Moscow, RUSSIA; Emnico Technologies Ltd, Westlea, Swindon, UNITED KINGDOM; Empresa De Telecommunicaciones De Bogota S.A. E.S.P., Bogota, COLUMBIA; Etihad Atheeb Telecom Co., Riyadh, SAUDI ARABIA; Freestone Ltd, London, UNITED KINGDOM; Georg-August Universitat, Gottingen, GERMANY; GISDATA GROUP, Zagreb, CROATIA; Globus Consulting, 03730 Javea, Alicante, SPAIN; Groundhog Technologies, Cambridge, MA; HTK Ltd, Ipswich, UNITED KINDGDOM; Ingenium Technology, Monza, Milano, ITALY; Integra Consultores C.A., Caracas, Estado Miranda, VENEZUELA; IntellPower, Johnannesburg, Gauteng, SOUTH AFRICA; Interfacing Technologies Corp., Montreal, Quebec, CANADA; InterSoft, Melbourne, Victoria, AUSTRALIA; Iowa Communications Network, Des Moines, IA; iPass, Redwood Shores, CA; Ixonos Plc, Helsinki, FINLAND; JDSU Test & Measurement, Milpitas, CA; JSC ''IPNET'', Moscow, RUSSIA; JSC UKRTELECOM, Kyiv, UKRAINE; Kentrox, Inc., Hillsboro, OR; Kordia, Auckland, NEW ZEALAND; LINKdotNET, Cairo, EGYPT; Men & Mice, Reykjavik, ICELAND; Microtest Education Center, Moscow, RUSSIA; moreCom as, Halden, NORWAY; NAB, Washington, DC; Neotel, Johannesburg, Gauteng, SOUTH AFRICA; Neptuny, Milan, ITALY; NZ Communications Ltd., Auckland, NEW ZEALAND; Ontology Systems, London, UNITED KINGDOM; Oy Swot Consulting Finland Ltd, Tampere, FINLAND; Perot Systems TSI (India) Ltd., Noida, Uttar Pradesh, INDIA; Prio, Inc., Overland Park, KS; Prodapt Corporation, Fremont, CA; Qvantel Software Solutions Ltd., Hyderabad, Andhra Pradesh, INDIA; Radiografica Costarricense S.A, San Jose, COSTA RICA; Satorai Solutions, Inc., Washington, DC; Selatra Limited, Cork, IRELAND; Sentech, Fourways, Gauteng, SOUTH AFRICA; Sequoia Telecom Associates, San Rafael, CA; serima Consulting sp. Zo. o., Gliwice, POLAND; Shabakkat, Kuwait City, KUWAIT; Sigma Tao Factory, S.A. de C.V., Queretaro, MEXICO; Signiant, Inc., Burlington, MA; SITA CORP, South Plainfield, NJ; Streamcore, Puteaux, FRANCE; Summa Telecom, Moscow, RUSSIA; TE Data, Dokki, Al-Jiza, EGYPT; Technology Training Limited, Cheltenham, Glos, UNITED KINGDOM; TEDESCA.BIZ, Schwanebeck, Berlin, GERMANY; Telecom Argentina, S.A., Buenos Aires, ARGENTINA; Teleconex Comercio e servicos em Telecomunicacoes Ltda ME, Campinas, Sao Paulo, BRAZIL; TmaxCore, Sungnam City, Gyeonggi-Do, SOUTH KOREA; TTNet A.S. (Turkish Telecom), Sisli/Instanbul, TURKEY; U Mobile Sdn Bhd, Kuala Lumpur, MALAYSIA; UBlqube Solutions, Grenoble, FRANCE; US Cellular, Chicago, IL; Velocent Systems Inc, Naperville, IL; Vertica Systems, Inc, Andover, MA; Virtusa Corporation, Westborough, MA; Vivo, SA, Sao Paulo, BRAZIL; Whitestein Technologies AG, Zug, SWITZERLAND; Winitu Communications B.V., Bodegraven, THE NETHERLANDS; and Xebia BV, Hilversum, THE NETHERLANDS, have been added as parties to this venture.

Also, 24*7 Telecom Services, Bear, DE; ACEWAY TELECOM TECHNOLOGY CO., LTD, Beijing, PEOPLE'S REPUBLIC OF CHINA; Actix, London, UNITED KINGDOM; Acumen Solutions UK Ltd, London, UNITED KINGDOM; AdvancedVoIP.com, Islamabad, PAKISTAN; Affinegy, Inc., Austin, TX; Anseres Consulting & Project Management, Rendsburg, GERMANY; Applied Broadband, Inc., Boulder, CO; Arkipelago Inc., Toronto, Ontario, CANADA; Ars Logica, Trento, ITALY; BOYRA, Bogota, COLUMBIA; Brighthaul, Herzelia, ISRAEL; Casema BV, Den Haag, THE NETHERLANDS; Centre of Software Engineering CSE, Hanoi, VIETNAM; China Link

Communications LTD, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Comergent Technologies, Redwood City, CA; CYPRUS TELECOMMUNICATIONS AUTHORITY (CYTA), Nicosia, CYPRUS; Dialog, Milton, Queensland, AUSTRALIA; DiGi Telecommunications Sdn Bhd, Shah Alam, Selangor, MALAYSIA; Embarq, Overland Park, KS; eServGlobal, Malakoff, Paris, FRANCE; Fernbrook Services, Montrose, Victoria, CANADA; Gamma Telecom, Newbury, Berkshire, UNITED KINGDOM; Giza Systems, Giza, Cairo, Mohandessen, EGYPT; ht systemberatung GmbH, Dorsten, GERMANY; iAxis Limited, Hyderabad, Andhra Pradesh, INDIA; Ilog, Inc., Gentilly Cedex, FRANCE; Industria, Dublin, IRELAND; JacobsRimell, London, UNITED KINGDOM; Kyak Systems Ltd, London, UNITED KINGDOM; Level 3 Communications, Broomfield, CO; Lounet Oy, Turku, FINLAND; Makendoski Telekomunikacii, Skopje, MACEDONIA; Micro Research SA, Namur, BELGIUM; Multikabel, Alkmaar, Noord, HOLLAND; Narus, Inc, Mountain View, CA; Neos Networks, Reading, Berkshire, UNITED KINGDOM; Ness Technologies & Systems Group (TSG), Tel Aviv, ISRAEL; Novabit Informationssysteme GmbH, Sauerlach, GERMANY; Novell, Waltham, MA; NTG Clarity Networks Inc, Cairo, EGYPT; Praxis High Integrity Systems Ltd, Bath, UNITED KINGDOM; Prepara2 America Inc, Miami, FL; PT. Smart Telecom, Jakarta, INDONESIA; S&T Austria GmbH, Vienna, AUSTRIA; SITA, Cointrin, Geneva, SWITZERLAND; Soluziona Mexico S.A. de C.V., Mexico City, MEXICO; SPIN SA UL. Wita Stwosza 7, POLAND; Sterling Commerce, Dublin, OH; Sycamore Networks, Inc., Chelmsford, MA; Terawave Communications Inc, Hayward, CA; Tigerstripe, Inc., Seattle, WA; Virgin Media, Hook, Hampshire, UNITED KINGDOM; and Virgin Mobile, Trowbridge, Wiltshire, UNITED KINGDOM, have withdrawn as parties to this venture.

The following members have changed their names: ADTRAN, Inc. to Adtran; ADVA Optical Networking Ltd to ADVA AG Optical Networking; Amdocs Management Limited to Amdocs Systems Europe Limited; Analysys Mason to Catalyst IT Partners Ltd; Aricent to Aricent Technologies (Holdings) Ltd; Bahrain Telecommunications (Batelco) to Batelco Group; Bahrain Telecommunications Company (Batelco) to Bahrain Telecommunications Company (BSC); BearingPoint INFONOVA GmBH to BearingPoint; Centre for Development of Advanced Computing (CDAC) to Center for Development of Advanced Computing; Cirquent GmbH to Softlab GmbH; Cognizant Technology Solutions U.S. Corporation to Cognizant Technology Solutions Corporation; ConceptWave Software to Concept Wave Software; Datentechnik Austria GmbH & Co KG to Datenchnik Austria GmbH & Co Nfg KG; Deloitte to Deloitte MCS Ltd; Elsag Datamat spa to Datamat S.p.A; Empresa De Telecommunicaciones De Bogota S.A. E.S.P. to ETB Colombia; Errigal Inc to Errigal Telecom Solutions; Hisashi Tada to Personal; INTRACOM S.A. TELECOM SOLUTIONS to INTRACOM S.A. ITS-International Turnkey Systems to ITS-Telecom Systems Group; JSC UKRTELECOM to JSC ''UKRTELECOM''; MTN Group to MTN; NGOSS Lab of Lanzhou University to Powerise Software Research of Lanzhou University; Nokia Siemens Networks GmbH & Co. KG to Nokia Siemens Networks BV; Nokia Siemens Networks GmbH & Co. KG to Nokia Siemens Networks Gmbh; Nokia Siemens Networks GmbH & Co. KG to Nokia Siemens Networks Gmbh & Co.KG; Ontology Systems to Ontology-Partners Ltd; OSSEra, Inc. to OSSEra, Inc.1; Process Management Consulting GmbH to Process Man GmbHagement Consulting; PT Smart Telecom to PT Wireless Indonesia; Radiografica Costarricense S.A to RACSA (Radiografica Costarricense SA); SAS to SAS Institute Global Services Pvt. Ltd.; Sigma Systems to Sigma Systems Canada Inc; Software AG to webMethods; Subex to Subex Azure Ltd.; Superna Business Consulting Inc to Superna Business Consulting; Sygnity to Computerland; Telcominvest to Telecominvest; Tele Design Servicos E Comercio De Telecomunicoes to Telconex Comercio e Servicios em Telecomunicoes LTDA ME; Tellabs Operations, Inc to Tellabs Oy; Turk Telekomunikasyon A.S. to Turk Telekomunikasyon A.S.; U.S. Cellular to U.S. Cellular; Vivo, SA to Vivo; Windward IT Solutions, LLC to Windward Consulting Group; Zain to Mobile Telecommunications Company Group; Zain Bahrain to MTC–Vodafone (Bahrain); Zain Bahrain to Zain (Bahrain); Zain Jordan to Jordan Mobile Telephone Services-Fastlink; Zain Kuwait to Mobile Telecommunications Company; and Ziggo to @Home.

The following members have changed their addresses: Acando AS to NORWAY; Aventnet, Inc to Pleasanton, CA; Amartus to Dun Laoghaire, IRELAND; ArchiTelco to Winchester, Hampshire, UNITED KINDGDOM; Bharti Airtel Ltd to Gurgaon, Haryana, INDIA; BTC Mobile (PTY) Ltd to Gaborone, BOTSWANA; CA to Portsmouth, NH; Center of Excellence to Abu Dhabi, UNITED ARAB EMIRATES; codecentric GmbH to Solingen, GERMANY; ConceptWave Software, Mississauga to Ontario, CANADA; Crown Interactive Limited to London, UNITED KINGDOM; DataSynapse Inc. to New York, NY; Datentechnik Wien to AUSTRIA; Deloitte to London, UNITED KINGDOM; EMBARQ, Overland Park to KS; Emnico Technologies Ltd to Westlea, Swindon, UNITED KINGDOM; Etihad Atheeb Telecom Co. to Riyadh, SAUDI ARABIA; Freestone Ltd to London, UNITED KINGDOM; Georg-August Universitat, Gottingen to Gottingen, GERMANY; GIP AG to Mainz, GERMANY; Globus Consulting to Alicante, SPAIN; Groundhog Technologies to Cambridge, MA; IBB Consulting Group to Philadelphia, PA; Innovative Systems to Mitchell, SD; Inteligentis Limited to Maidenhead, Berkshire, UNITED KINGDOM; Interfacing Technologies Corp to Montreal, Quebec, CANADA; InterSoft to Melbourne, Victoria, AUSTRALIA; iPass to Redwood Shores, CA; Ixonos Plc to Helsinki, FINLAND; JDSU Test & Measurement to Milpitas, CA; Kordia to Auckland, NEW ZEALAND; Kornel Terplan to Hackensack, NJ; Kvazar-Micro Corporation BV to Amsterdam, THE NETHERLANDS; MSTelcom to Luanda, ANGOLA; Nortel to Ottawa, Ontario, CANADA; OMANTEL to Ruwi, Muscat, OMAN; Piran Partners LLP to London, UNITED KINGDOM; Process Management Consulting GmbH to Muenchen, GERMANY; Satorai Solutions, Inc. to Washington, DC; Signiant, Inc. to Burlington, MA; Superna Business Consulting Inc to Ottawa, Ontario, CANADA; Sybase SA to Johannesburg, Rivonia, SOUTH AFRICA; Sygnity to Warsaw, Mazowieckie, POLAND; TeamQuest Corporation to IA; Technology Training Limited to Cheltenham, Gloucestershire, UNITED KINGDOM; Telecom Argentina, S.A. to Buenos Aires, ARGENTINA; Telecom@Work to Bornem, BELGIUM; TmaxCore to Sungnam City, Gyeonggi-Do, REPUBLIC OF KOREA; TTI Telecom to Rosh Ha'ayin, ISRAEL; U.S. Cellular to Chicago, IL; VicTrack to Docklands, Victoria, AUSTRALIA; Virtusa Corporation to Westborough, MA; Vivo, SA to Sao Paulo, BRAZIL; and Whitestein Technologies AG to Zug, SWITZERLAND.

No other changes have been made in either the membership or planned activity of the group research project.

Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on February 14, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 16, 2008 (73 FR 20714).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–26551 Filed 11–7–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,108; TA–W–64,108C; TA–W–64,108D]

American Fibers and Yarns Company, Chapel Hill, NC; Including Employees of American Fibers and Yarns Company, Chapel Hill, NC Operating at Various Locations in the Following States: Delaware, South Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 14, 2008, applicable to workers of American Fibers and Yarns Company, Chapel Hill, North Carolina. The notice will be published soon in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm.

New information shows that worker separations have occurred involving employees of the Chapel Hill, North Carolina location of American Fibers and Yarns Company operating out of various locations in the states of Delaware and South Carolina. These employees provided sales function services for the production of polypropylene yarn produced by the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Chapel Hill, North Carolina facility of the subject firm working out of various locations in the above mentioned states.

The intent of the Department's certification is to include all workers of American Fibers and Yarns Company, Chapel Hill, North Carolina who qualify as secondarily affected by increased imports of polypropylene yarn.

The amended notice applicable to TA–W–64,108 is hereby issued as follows:

All workers of American Fibers and Yarns Company, Chapel Hill, North Carolina (TA–W–64,108), including employees in support of American Fibers and Yarns Company, Chapel Hill, North Carolina located at various locations in the following states: Delaware (TA–W–64,108C) and South Carolina (TA–W–64,108D), who became totally or partially separated from employment on or after September 24, 2007, through October 14, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 29th day of October 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–26685 Filed 11–7–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of October 20 through October 24, 2008.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a

certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,970; A. Klein & Company, Inc., Hiring Authority, Claremont, NC: August 29, 2007.

TA–W–64,034; Regina Behar Enterprises, Inc., Miami Lakes, FL: September 8, 2007.

TA–W–64,131; A.H. Schreiber Company, Bristol, TN: September 26, 2007.

TA–W–64,143; Universal Manufacturing Corporation, Choice One, Alltek Staffing & Resource Group, Zelienople, PA: September 30, 2007.

TA–W–64,200; Bridgestone Firestone Diversified Products, Firestone Industrial Products, Noblesville, IN: October 9, 2007.

TA–W–64,232; Sierra Pine Ltd, Medite Division, Medford, OR: October 15, 2007.

TA–W–63,891; Fluid Routing Solutions, Detroit, MI: August 14, 2007.

TA–W–63,900; Berne Furniture Company, Berne, IN: August 15, 2007.

TA–W–64,093; Seamless Sensations, Inc., Chester, SC: September 19, 2007.

TA–W–64,151A; Casey Tool and Machine Co., Inc., Charleston, IL: September 30, 2007.

TA–W–64,151; Casey Tool and Machine Co., Inc., Casey Plant, Westaff, Casey, IL: September 30, 2007.

TA–W–64,191; Bill Sills Sportswear, Inc., PACE, Huntingdon, TN: October 6, 2007.

TA–W–64,037A; U.S. Textile Corporation, Hosiery Corp., Fullfillment Div., Heath Springs, SC: September 11, 2007.

TA–W–64,037; U.S. Textile Corporation, Hosiery Corp., Packaging & Dyeing Div., Lancaster, SC: September 11, 2007.

TA–W–64,157; Ben Mar Hosiery, Fort Payne, AL: September 30, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,856; Starkey Laboratories, Inc., Eden Praire, MN: August 11, 2007.

TA–W–64,021; Robert Bosch, LLC, Automotive Full Brake Div., Sumter, SC: September 23, 2008.

TA–W–64,027; Delphi Powertrain, Bartech, Flint, MI: September 9, 2007.

TA–W–64,061; RR Donnelley, Forms Business Unit, Kelly Services and Manpower, Monroe, WI: September 5, 2007.

TA–W–64,127; Hewlett-Packard Company, Inkjet Consumer Solutions, Vancouver, WA: September 26, 2007.

TA–W–64,141; Microplane, Division of Grace Manufacturing, Inc., Russellville, AR: September 30, 2007.

TA–W–64,169; Fisher and Paykel Appliances LLC, Huntington Beach, CA: October 2, 2007.

TA–W–64,204; Cable Manufacturing & Assembly Company, Inc. (CMA), Actuation Products Div., Philipsburg, PA: October 9, 2007.

TA–W–64,207; Delphi Corporation, Electronics and Safety Division, Vandalia, OH: September 24, 2007.

TA–W–64,212; BAE Systems, Products Group, Second Chance Armor Division, Central Lake, MI: October 1, 2007.

TA–W–64,215; Hewlett-Packard Co., Inkjet Consumer Solutions, San Diego, CA: September 26, 2007.

TA–W–64,240; Labinal, Inc., Pryor, OK: September 16, 2007.

TA–W–63,940; Diebold, Inc., Lexington, NC: August 25, 2007.

TA–W–64,026; St. Louis Post Dispatch (The), Pre-Press Department, St. Louis, MO: September 10, 2007.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–64,029; Tennessee Wood Resources LLC, Subsidiary of Norwalk Int'l Wood Products, Jamestown, TN: September 10, 2007.

TA–W–64,116; Woodgrain Millwork, Inc., Fruitland Mill Division, Fruitland, ID: September 16, 2007.

TA–W–64,158; NCM Chassis Systems LLC, Subsidiary of Metaldyne Company LLC, New Castle, IN: October 1, 2007.

TA–W–64,170; Pretty Products LLC, Mt. Pleasant, TN.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–63,921; Nobel Automotive TN, LLC, Paris, TN.
TA–W–63,956; Cooper Standard Automotive, Body and Chassis Division, Gaylord, MI.
TA–W–64,023; CBC Latrobe Acquisitions, LLC, a Subsidiary of City Brewery Company, LLC, Latrobe, PA.
TA–W–64,076; Pearson Education, Inc., York, PA.
TA–W–64,107; Dillards Department Stores, Women's Design Division, Little Rock, AR.
TA–W–64,146; Angelo DiMaria, Inc., Providence, RI.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–64,068; Memorex Products, Inc., Cerritos, CA.
TA–W–64,095; Liberty Hardware Manufacturing Corporation, Randolph, NJ.
TA–W–64,133; Cencorp LLC, Boulder, CO.
TA–W–64,185; PL Subsidiary, Inc., Charlotte, NC.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of October 20 through October 27, 2008. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 4, 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–26686 Filed 11–7–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications for 2008 Under the Federal Unemployment Tax Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Secretary of Labor signed the annual certifications under the Federal Unemployment Tax Act, 26 U.S.C. 3301 *et seq.*, thereby enabling employers who make contributions to state unemployment funds to obtain certain credits against their liability for the federal unemployment tax. By letter, the certifications were transmitted to the Secretary of the Treasury. The letter and certifications are printed below.

Signed in Washington, DC November 3, 2008.

Brent R. Orrell,

Deputy Assistant Secretary of Labor, Employment and Training Administration.

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

October 31, 2008

The Honorable Henry M. Paulson
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Dear Secretary Paulson:

Transmitted herewith are an original and one copy of the certifications of the states and their unemployment compensation laws for the 12-month period ending on October 31, 2008. One is required with respect to the normal Federal unemployment tax credit by Section 3304 of the Internal Revenue Code of 1986 (IRC), and the other is required with respect to the additional tax credit by Section 3303 of the IRC. Both certifications list all 53 jurisdictions.

Sincerely,

E. L. Chao

Elaine L. Chao

Enclosures

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF THE DEPUTY SECRETARY
WASHINGTON, D.C.

CERTIFICATION OF STATES TO THE SECRETARY OF THE TREASURY PURSUANT TO SECTION 3304(c) OF THE INTERNAL REVENUE CODE OF 1986

In accordance with the provisions of Section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)), I hereby certify the following named states to the Secretary of the Treasury for the 12-month period ending on October 31, 2008, in regard to the unemployment compensation laws of those states which heretofore have been approved under the Federal Unemployment Tax Act:

Alabama	Idaho
Alaska	Illinois
Arizona	Indiana
Arkansas	Iowa
California	Kansas
Colorado	Kentucky
Connecticut	Louisiana
Delaware	Maine
District of Columbia	Maryland
Florida	Massachusetts
Georgia	Michigan
Hawaii	Minnesota

Mississippi

Missouri

Montana

Nebraska

Nevada

New Hampshire

New Jersey

New Mexico

New York

North Carolina

North Dakota

Ohio

Oklahoma

Oregon

Pennsylvania

Puerto Rico

Rhode Island

South Carolina

South Dakota

Tennessee

Texas

Utah

Vermont

Virginia

Virgin Islands

Washington

West Virginia

Wisconsin

Wyoming

This certification is for the maximum normal credit allowable under Section 3302(a) of the Code.

Signed at Washington, D.C., on October 31, 2008.

E. L. Chao

Elaine L. Chao
Secretary of Labor

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF THE DEPUTY SECRETARY
WASHINGTON, D.C.

CERTIFICATION OF STATE UNEMPLOYMENT COMPENSATION LAWS TO THE SECRETARY OF THE TREASURY PURSUANT TO SECTION 3303(b)(1) OF THE INTERNAL REVENUE CODE OF 1986

In accordance with the provisions of paragraph (1) of Section 3303(b) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(b)(1)), I hereby certify the unemployment compensation laws of the following named states, which heretofore have been certified pursuant to paragraph (3) of Section 3303(b) of the Code, to the Secretary of the Treasury for the 12-month period ending on October 31, 2008:

Alabama	Idaho
Alaska	Illinois
Arizona	Indiana
Arkansas	Iowa
California	Kansas
Colorado	Kentucky
Connecticut	Louisiana
Delaware	Maine
District of Columbia	Maryland
Florida	Massachusetts
Georgia	Michigan

Hawaii

Mississippi

Missouri

Montana

Nebraska

Nevada

New Hampshire

New Jersey

New Mexico

New York

North Carolina

North Dakota

Ohio

Oklahoma

Oregon

Pennsylvania

Minnesota

Puerto Rico

Rhode Island

South Carolina

South Dakota

Tennessee

Texas

Utah

Vermont

Virginia

Virgin Islands

Washington

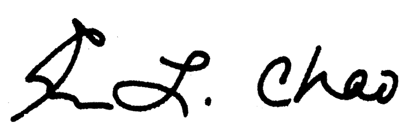
West Virginia

Wisconsin

Wyoming

This certification is for the maximum additional credit allowable under Section 3302(b) of the Code.

Signed at Washington, D.C., on October 31, 2008.



Elaine L. Chao
Secretary of Labor

[FR Doc. E8–26736 Filed 11–7–08; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0044]

Permit-Required Confined Spaces; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirement contained in the Standard on Permit-Required Confined Spaces (29 CFR 1910.146). The purpose of the information is to ensure that employers systematically evaluate the dangers in permit spaces before entry is attempted, and to ensure that adequate measures are taken to make the spaces safe for entry.

DATES: Comments must be submitted (postmarked, sent, or received) by January 9, 2009.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0044, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2008–0044). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Section 1910.146(c)(2) requires the employer to post danger signs to inform exposed employees of the existence and location of, and the danger posed by, permit spaces.

Section 1910.146(c)(4) requires the employer to develop and implement a written ''permit-space program'' when the employer decides that its employees will enter permit-spaces. The written program is to be made available for inspection by employees and their authorized representatives. Section 1910.146(d) provides the employer with the requirements of a permit-required confined space program (''permit-space program'') required under this paragraph.

Section 1910.146(c)(5)(i)(E) requires that the determinations and supporting data specified by paragraphs (c)(5)(i)(A), (c)(5)(i)(B), and (c)(5)(i)(C) of this section are documented by the employer and are made available to each employee who enters a permit space or to that employee's authorized representative.

Under paragraph (c)(5)(ii)(H) of § 1910.146, the employer is required to verify that the space is safe for entry and that the pre-entry measures required by paragraph (c)(5)(ii) of this section have been taken, using a written certification that contains the date, the location of the space, and the signature of the person providing the certification. The certification is to be made before entry and is required to be made available to each employee entering the space or to that employee's authorized representative.

Section 1910.146(c)(7)(iii) requires the employer to document the basis for determining that all hazards in a permit space have been eliminated using a certification that contains the date, the location of the space, and the signature of the person making the determination. The certification is to be made available to each employee entering the space or to that employee's authorized representative.

Section 1910.146(c)(8)(i) requires that the employer inform the contractor that the workplace contains permit spaces and that permit space entry is allowed only through compliance with a permit space program meeting the requirements of this section.

Section 1910.146(c)(8)(ii) requires that the employer apprise the contractor of the elements, including the hazards identified and the host employer's experience with the space, that make the space in question a permit space. Section 1910.146(c)(8)(iii) requires that the employer apprise the contractor of any precautions or procedures that the host employer has implemented for the protection of employees in or near permit spaces where contractor personnel will be working. Section 1910.146(c)(8)(v) requires the employer to debrief the contractor at the conclusion of the entry operations regarding the permit space program followed and regarding any hazards confronted or created in permit spaces during entry operations.

Section 1910.146(c)(9)(iii) requires that the contractor inform the host employer of the permit space program that the contractor will follow and of any hazards confronted or created in permit spaces, either through a debriefing or during the entry operation.

Section 1910.146(d)(5)(vi) requires the employer to immediately provide each authorized entrant or that employee's authorized representative with the results of any testing conducted in accordance with paragraph (d) of this section.

Section 1910.146(e)(1) requires the employer to document the completion of measures required by paragraph (d)(3) by preparing an entry permit before employee entry is authorized. Paragraph (f) of § 1910.146 specifies the information to be included on the entry permit. Paragraph (e)(3) requires that the employer make the completed permit available at the time of entry to all authorized entrants by posting the permit at the entry portal or by any other equally effective means, so that the entrants can confirm that pre-entry preparations have been completed. Paragraph (e)(6) requires the employer to retain each canceled entry permit for at least one year.

Section 1910.146(g)(4) requires that the employer certify that the training required by paragraphs (g)(1) through (g)(3) has been accomplished by preparing a written certification record.

Section 1910.146(k)(1)(iv) requires that the employer inform each rescue team or service of the hazards they may confront when called on to perform rescue at the site.

Section 1910.146(k)(2)(ii) requires that the employer train affected employees to perform assigned rescue duties. The employer must ensure that such employees successfully complete the training required to establish proficiency as an authorized entrant, as provided by paragraphs (g) and (h) of this section. Section 1910.146(k)(2)(iii) requires that the employer train affected employees in basic first-aid and cardiopulmonary resuscitation (CPR). The employer shall ensure that at least one member of the rescue team or service holding a current certification in first aid and CPR is available.

Section 1910.146(k)(4) requires that if an injured entrant is exposed to a substance for which a Material Safety Data Sheet (MSDS) or other similar written information is required to be kept at the worksite, that the employer make the MSDS or written information available to the medical facility treating the exposed entrant.

Section 1910.146(l)(2) requires that employers make all information required to be developed by this section available to affected employees and their authorized representatives.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Permit-Required Confined Spaces (29 CFR 1910.146). OSHA is proposing to decrease the existing burden hour estimate for the collection of information requirements specified by the Standard from 1,523,763 hours to 1,475,091 hours, for a total decrease of 48,672 hours. This adjustment decrease was due to updated data that indicated a slight decline in the numbers of establishments with permit spaces, permit spaces, and permit space entrants. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Permit-Required Confined Spaces (29 CFR 1910.146).

OMB Number: 1218–0203.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, local, or tribal government.

Number of Respondents: 219,456.

Frequency of Response: On occasion.

Average Time per Response: Varies from one minute (.02 hour) to maintain a certificate to 16 hours to develop a written permit space entry program.

Estimated Total Burden Hours: 1,475,091.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2008–0044). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork

Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on November 3, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–26585 Filed 11–7–08; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–084)]

NASA International Space Station Advisory Committee; meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NASA International Space Station Advisory Committee.

DATES: Thursday, December 4, 2008, 2 p.m. to 3 p.m. Eastern Standard Time.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 7H45, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. J. Donald Miller, Office of External Relations, (202) 358–1527, National Aeronautics and Space Administration, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to assess NASA and Roscosmos plans to support a six-person crew aboard the International Space Station, including transportation, crew rotation, training, and micro meteoroid and orbital debris shielding.

This meeting will be open to the public up to the seating capacity of the room. Five seats will be reserved for members of the press. Attendees will be required to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. All attendees will need to provide the following information to receive an access badge: Full name; gender; date/place of birth; citizenship; employer/affiliation information (name of institution, address, county, phone), and title/position. Foreign nationals will need to provide the following additional information: Visa/green card information (number, type, expiration date). To expedite admittance, attendees can provide their identifying information in advance by contacting Dr. Miller via e-mail at *j.d.miller@nasa.gov* or by telephone at (202) 358–1527 by November 20, 2008. Persons with disabilities who require assistance should indicate this.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: October 31, 2008.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E8–26632 Filed 11–7–08; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–4013.

FOR FURTHER INFORMATION CONTACT: Steve Garry, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–2766 or e-mail to *Steve.Garry@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft regulatory guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), titled, ''Environmental Monitoring for Nuclear Power Plants,'' is temporarily identified by its task number, DG–4013, which should be mentioned in all related correspondence.

DG–4013, which is proposed Revision 2 of Regulatory Guide 4.1, describes a method that the staff of the NRC considers acceptable for use in establishing and conducting baseline environmental monitoring at nuclear power plants. To meet this objective, the guide describes programs for preoperational and operational environmental monitoring, including both onsite and offsite environmental monitoring. The guide also describes how information obtained in the environmental monitoring program can be used to document information on residual radioactivity that may be useful during decommissioning.

The regulatory framework that the NRC has established as the basis for the radiological environmental monitoring program (REMP) appears in section IV.B of Appendix I, ''Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion 'As Low As Is Reasonably Achievable' for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents,'' to Title 10, Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of the *Code of Federal Regulations* (10 CFR Part 50); and in 10 CFR 20.1302, ''Compliance with Dose Limits for Individual Members of the Public'' (10 CFR 20). These regulations require the establishment of an appropriate surveillance and monitoring program to obtain data on measurable levels of radiation and radioactive materials in the environment and to perform surveys in the unrestricted and controlled areas. The data on measurable levels of radiation and radioactive materials in the environment are used to evaluate the relationship between quantities of radioactive materials released in effluents and resultant radiation dose to individuals from principal pathways of exposure. This regulatory guide also provides methods of evaluating the relationship between effluents released and environmental monitoring results.

II. Further Information

The NRC staff is soliciting comments on DG–4013. Comments may be accompanied by relevant information or supporting data, and should mention DG–4013 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *E-mail comments to: nrcrep.resource@nrc.gov*.

3. *Hand-deliver comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

4. *Fax comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about DG–4013 may be directed to Steve Garry at (301) 415–2766 or e-mail to *Steve.Garry@nrc.gov*.

Comments would be most helpful if received by January 9, 2009. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–4013 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML080660608.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 4th day of November, 2008.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–26708 Filed 11–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Regulatory Guide and the Withdrawal of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide (RG) 3.11, Revision 3, and the withdrawal of Revision 1 of RG 3.11.1.

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6373 or e-mail to *Mark.Orr@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series and the withdrawal of a regulatory guide. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 3 of RG 3.11, ''Design, Construction, and Inspection of Embankment Retention Systems at Uranium Recovery Facilities,'' was issued with a temporary identification as Draft Regulatory Guide, DG–3032. This guide describes some engineering practices and methods generally considered by the NRC staff to be satisfactory for the design, construction, and inspection of embankment retention systems used for retaining liquid and solid wastes from uranium recovery operations. These practices and methods are the result of NRC review and action on a number of specific cases, and they reflect the latest general engineering approaches that are acceptable to the NRC staff. If future information results in alternative methods, the NRC staff will review such methods to determine their acceptability.

DG–3032 updated and combined the guidance in Revision 2 of RG 3.11, and Revision 1 of RG 3.11.1, ''Operational Inspection and Surveillance of Embankment Retention Systems for Uranium Mill Tailings.'' For this reason, Revision 1 of RG 3.11.1 is being withdrawn.

II. Further Information

In February 2008, DG–3032 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on May 16, 2008. The staff's responses to the public comments are located in the NRC's Agencywide Documents Access and Management System (ADAMS), Accession Number ML082380161.

Electronic copies of Revision 3 of RG 3.11 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/*.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 4th day of November, 2008.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–26706 Filed 11–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG/CR–6966]

Tsunami Hazard Assessment at Nuclear Power Plant Sites in the United States of America; Availability of Draft Report for Comment

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC is soliciting public comment on its draft report titled ''Tsunami Hazard Assessment at Nuclear Power Plant Sites in the United States of America,'' (NUREG/CR–6966) (ADAMS Accession No. ML082810348). This draft report describes the tsunami phenomenon with the focus on its relevance for hazard assessment at nuclear power plant sites. Any interested party may submit comments

on this report for consideration by the NRC staff. Comments may be accompanied by additional relevant information or supporting data.

DATES: Comments must be filed on or before close of business on December 5, 2008. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted to: Chief, Rulemaking, Directives and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be delivered to: 11545 Rockville Pike, Rockville, Maryland, Room T–6D59, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Persons may also provide comments via e-mail at *Goutam.Bagchi@nrc.gov.* The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Nilesh Chokshi, Deputy Director, Division of Site and Environmental Reviews, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1634 or e-mail at *Nilesh.Chokshi@nrc.gov.*

SUPPLEMENTARY INFORMATION: The agency posts its reports in the agency external web at the index pages for document collections *http://www.nrc.gov/reading-rm/doc-collections/nuregs/contract/cr6966.*

The NRC staff is issuing this notice to solicit public comments on the draft report NUREG/CR–6966. After the NRC staff considers any public comments, it will make a determination for suitable incorporation in the final report.

Dated at Rockville, Maryland, the 31st day of October 2008.

For the Nuclear Regulatory Commission.

William D. Reckley,

Chief, Rulemaking, Guidance and Advanced Reactors Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–26707 Filed 11–7–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

[Docket No. OST–2007–27407]

National Surface Transportation Infrastructure Financing Commission

AGENCY: Department of Transportation (DOT).

ACTION: Notice of meeting location and time.

SUMMARY: This notice lists the location and time of the sixteenth meeting of the National Surface Transportation Infrastructure Financing Commission.

FOR FURTHER INFORMATION CONTACT: John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366–9224, *jack.wells@dot.gov.*

SUPPLEMENTARY INFORMATION: By **Federal Register** Notice dated March 12, 2007, and in accordance with the requirements of the Federal Advisory Committee Act (''FACA'') (5 U.S.C. App. 2) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (''SAFETEA–LU'') (Pub. L. 109–59, 119 Stat. 1144), the U.S. Department of Transportation (the ''Department'') issued a notice of intent to form the National Surface Transportation Infrastructure Financing Commission (the ''Financing Commission''). Section 11142(a) of SAFETEA–LU established the National Surface Transportation Infrastructure Financing Commission and charged it with analyzing future highway and transit needs and the finances of the Highway Trust Fund and with making recommendations regarding alternative approaches to financing surface transportation infrastructure.

Notice of Meeting Location and Time

The Commissioners have agreed to hold their sixteenth meeting from 8:30 a.m. to 4 p.m. on Thursday, November 20, 2008, at the office of the Information Technology and Innovation Foundation (ITIF), 1250 I (''Eye'') Street, NW., Suite 200, Washington, DC 20005. The meeting will be open to the public.

If you need accommodations because of a disability or require additional information to attend the meeting, please contact John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366–9224, *jack.wells@dot.gov.*

Issued on this 4th day of November 2008.

John V. Wells,

Chief Economist, U.S. Department of Transportation, Designated Federal Official.

[FR Doc. E8–26694 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Los Angeles County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of withdrawal.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed Interstate 5 (I–5) High Occupancy Vehicle (HOV) and Truck Lanes project in the City of Santa Clarita and the County of Los Angeles (**Federal Register** Vol. 72, No. 90; FR Doc. E7–8937), California will be withdrawn, and an Environmental Assessment (EA) in lieu of an EIS is being prepared for this proposed highway project.

FOR FURTHER INFORMATION CONTACT: Mine Struhl, Associate Environmental Planner, California Department of Transportation, Division of Environmental Planning, 100 S. Main St., MS 16A, Los Angeles, CA 90012, (213) 897–5446.

SUPPLEMENTARY INFORMATION: The FHWA, on behalf of the California Department of Transportation (Caltrans), is advising the general public that Caltrans conducted studies of the potential environmental impacts associated with the proposed highway project. The project proposes to widen existing I–5 between the State Route 14 (SR–14) Interchange and the Parker Road Interchange. The project area is in Los Angeles County and covers a distance of approximately 13.6 miles (mi).

Within the limits of the proposed project, I–5 currently provides generally four mixed-flow lanes in each direction, with the exception of three mixed-flow lanes in each direction at the I–5/SR–14 interchange. In addition, two truck lanes in each direction are separated from the mainline freeway south of the Weldon Canyon Overcrossing. The project segment of I–5 crosses the City of Santa Clarita, the unincorporated community of Castaic, and other parts of unincorporated northern Los Angeles County.

The project proposes extending the HOV lanes on I–5 from the newly constructed HOV lanes south of the SR–14 interchange to just south of the Parker Road/I–5 interchange, incorporating truck climbing lanes from the SR–14 interchange to Pico Canyon Road/Lyons Avenue, and constructing and/or extending auxiliary lanes between interchanges at six locations.

Three alternatives, including the No Build Alternative, are being analyzed as part of the Draft EA. The alternatives are defined as follows: Alternative 1—No Build; Alternative 2—Reduced Median; and Alternative 3—Full Median. Alternative 2 would provide one HOV lane in each direction from SR–14 to Parker Road and truck climbing lanes in each direction from SR–14 to Calgrove Boulevard (NB) and Pico Canyon Road/ Lyons Road (SB). This Reduced Median Alternative would provide standard lane widths. Alternative 3 would include the same HOV and truck lanes as described above and would provide for standard lane widths and full shoulders.

The EA will be available for public inspection prior to the public meeting. Comments or questions concerning this proposed action and the determination that an EA is the proper environmental document should be directed to Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: November 3, 2008.

Nancy E. Bobb,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E8–26714 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the proposed South Stockton Six-Lane Project on State Route 99 beginning at the Arch Road Interchange at post mile 15.0 to the State Route 4 (Crosstown Freeway) Interchange at post mile 18.6 located in the eastern edge of the city of Stockton, in San Joaquin County, State of California. Those actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 11, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Dominic Hoang, Project Development Engineer, FHWA, 650 Capitol Mall, #4–100, Sacramento, CA 95814; weekdays 7 a.m. to 4 p.m. (Pacific time); telephone (916) 498–5002; e-mail: *dominic.hoang@fhwa.dot.gov*. Gail Miller, Senior Environmental Planner, California Department of Transportation (Caltrans), 2015 E. Shields Avenue #100, Fresno, CA 93726; weekdays 8 a.m. to 5 p.m. (Pacific time); telephone (559) 243–8274; e-mail: *gail_miller@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of California. The South Stockton Six-Lane Project would increase capacity to reduce delay (congestion), improve traffic operations and safety, and provide route continuity. This would be accomplished by widening State Route 99 from a four-lane freeway to a six-lane freeway, with improvements to road crossings and an intersecting railroad crossing. The actions by the Federal agencies and the laws under which such actions were taken are described in the Environmental Assessment (EA)/ Finding of No Significant Impact (FONSI) for the project, approved on October 15, 2008, and in other documents in the FHWA administrative record. The EA/FONSI and other documents are available by contacting FHWA or Caltrans at the addresses provided above. The FHWA EA/FONSI can be viewed and downloaded from the project Web site at: *http://www.dot.ca.gov/dist6/environmental/envdocs/d10/*.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; and Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Land:* Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Wetlands Mitigation [23 U.S.C. 103(b)(6)(m) and 133(b)(11)]; Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Flood Disaster Protection Act, 42 U.S.C. 4001–4128; and Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)].
5. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; and Migratory Bird Treaty Act [16 U.S.C. 703–712].
6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469c]; Archaeological Resources Protection Act of 1979 [16 U.S.C. 470 *et seq.*]; and Native American Graves Protection and Repatriation Act [25 U.S.C. 3001–3013].
7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; American Indian Religious Freedom Act [42 U.S.C. 1996]; and The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.
8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986; and Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].
9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O.12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of the Cultural Environment; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; and E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: November 4, 2008.

Nancy Bobb,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E8–26695 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below.

Docket Number FRA–2008–0010

Applicant: Northwestern Pacific Railroad Company, Mr. John H. Williams, President, 385 Sherman Avenue, Suite 1, Palo Alto, California 94306–1840.

The Northwestern Pacific Railroad Company (NWP) seeks informal reconsideration of FRA's decision for denial of the proposed discontinuance and removal of the interlocking signal systems on three drawbridges that are located between a point near Lombard, California, at Milepost (MP) 63.4 and a point near Petaluma, California, at MP 38.5 on the NWP's Russian River Division at the following three locations: Brazos Drawbridge, MP 64.7; Black Point Drawbridge, MP 28.7; and Haystack Landing Drawbridge, MP 37.2.

The reasons given for the reconsideration are: the addition of concurrence of the Sonoma-Marin Area Rail Transit District (SMART), clarification that SMART does not have plans to operate passenger trains over either the Brazos Drawbridge or the Black Point Drawbridge, and the fact that SMART has plans to replace the Haystack Landing Bridge as part of the passenger rail project with a modern lift bridge with interlocking signal protection before any passenger trains operate over it.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA–2008–0010 and may be submitted by one of the following methods:

- *Web site: http://www.regulations.gov*. Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; or
- *Hand Delivery:* Room W12–140 of the U.S. Department of Transportation West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC, on November 3, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–26729 Filed 11–7–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning a proposed new collection titled ''Customer Complaint Form.'' The OCC is also giving notice that it has submitted the collection to OMB for review.

DATES: You should submit written comments by: December 10, 2008.

ADDRESSES: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0232, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043. For security reasons, the OCC requires that visitors make an appointment to inspect comments. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0232, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection: Customer Complaint Form.

OMB Control No.: 1557–0232.

Description: The customer complaint form was developed as a courtesy for those that contact the Office of the Comptroller of the Currency's Customer Assistance Group and wish to file a formal, written complaint. The form allows consumers to focus their issues and provide a complete picture of their concerns, but is entirely voluntary. It is designed to prevent having to go back to a consumer for additional information, which delays the process. Completion of the form allows the Customer Assistance Group to process the complaint more efficiently.

The Customer Assistance Group will use the information to create a record of the consumer's contact, including capturing information that can be used to resolve the consumer's issues and provide a database of information that is incorporated into the OCC's supervisory process.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Number of Respondents: 14,000.

Total Annual Responses: 14,000.

Frequency of Response: On occasion.

Total Annual Burden Hours: 924.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

On September 4, 2008, the OCC published a notice in the **Federal Register** soliciting comment for 60 days on this information collection (73 FR 51701). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 4, 2008.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. E8–26698 Filed 11–7–08; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0178]

Proposed Information Collection (Monthly Certification of On-the-Job and Apprenticeship Training) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's continued eligibility for educational benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 9, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0178" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Monthly Certification of On-the-Job and Apprenticeship Training, VA Forms 22–6553d and 22–6553d–1.

OMB Control Number: 2900–0178.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants receiving on the job and apprenticeship training complete VA Form 22–6553d to report the number of hours worked. Schools or training establishments also complete the form to report whether the claimant's educational benefits are to be continued unchanged or terminated, and the effective date of such action. VA Form 22–6553d–1 is an identical printed copy of VA Form 22–6553d. Claimants use VA Form 22–6553d–1 when the computer-generated version of VA Form 22–6553d is not available. VA uses the data collected to process a claimant's educational benefit claim.

Affected Public: Individuals or households.

Estimated Annual Burden: 30,722 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 20,481.

Number of Responses Annually: 184,329.

Dated: October 30, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–26628 Filed 11–7–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0353]

Proposed Information Collection (Certification of Lessons Completed) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to report the number of correspondence course lessons completed and for correspondence schools to report the number of lessons serviced.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 9, 2009.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0353'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification of Lessons Completed, (Under Chapters 30, 32, and 35, Title 38, U.S.C.; Chapters 31, 110, 1606 and 1607, Title 10, U.S.C., and Section 903, Public Law 96–342), VA Forms 22–6553b and 22–6553b–1.

OMB Control Number: 2900–0353.

Type of Review: Extension of a currently approved collection.

Abstract: Students enrolled in a correspondence school complete VA Forms 22–6553b and 22–6553b–1 to report the number of correspondence course lessons completed and forward the forms to the correspondence school for certification. School official certifies the number of lessons serviced and submits the forms to VA for processing. Benefits are payable based on the data provided on the form. Benefits are not payable when students interrupt, discontinue, or complete the training. VA uses the data collected to determine the amount of benefit that is payable.

Affected Public: Individuals or households, and Business or other for-profit.

Estimated Annual Burden: 411 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents: 821.

Number of Responses Annually: 2,463.

Dated: October 30, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–26629 Filed 11–7–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0695]

Proposed Information Collection (Application for Reimbursement of Licensing or Certification Test Fees) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine an applicant's eligibility for reimbursement of licensing and certification test fees.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 9, 2009.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0695'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Reimbursement of Licensing or Certification Test Fees, 38 CFR 21.1030(b), 21–7140(c)(4), VA Form 22–0803.

OMB Control Number: 2900–0695.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants complete VA Form 22–0803 to request reimbursement of licensing or certification fees paid.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,000 hours.

Frequency of Response: On occasion.

Estimated Average Burden per Respondent: 15 minutes.

Estimated Annual Responses: 4,000.

Dated: October 30, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–26630 Filed 11–7–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
November 10, 2008

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0146; FRL–8737–8]

RIN 2060–AO55

National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice to proposed rulemaking.

SUMMARY: This action supplements the proposed amendments to the national emission standards for petroleum refineries (Refinery MACT 1) published on September 4, 2007. The 2007 proposal, in part, sets forth proposed maximum achievable control technology and residual risk requirements for cooling towers and proposed residual risk and technology review requirements for storage tanks. This supplemental proposal contains new proposed requirements for cooling towers, a new option for storage vessels, and clarifications and corrections to definitions, tables, and regulatory citations.

DATES: Comments must be received on or before December 10, 2008, unless a public hearing is requested by November 20, 2008. If a hearing is requested on the proposed rule, written comments must be received by December 26, 2008. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before December 10, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0146, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2003–0146.
- *Fax:* Fax your comments to: (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2003–0146.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2003–0146. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**). In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Office for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0146. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0884; fax number (919) 541–0246; e-mail address: *lucas.bob@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The regulated category and entities affected by this proposed action include:

Category	NAICS[1] code	Examples of regulated entities
Industry	32411	Petroleum refineries located at a major source that are subject to 40 CFR part 63, subpart CC.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed rule. To determine whether your facility would be regulated by the proposed amendments, you should carefully examine the applicability criteria in 40 CFR 63.100 of subpart CC (National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries). If you have any questions regarding the applicability of this action to a particular entity, contact either the air permit authority for the entity or your

EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

B. What should I consider as I prepare my comments for EPA?

Do not submit information containing CBI to EPA through *www.regulations.gov* or e-mail. Send or deliver information as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2003–0146 (for petroleum refineries). Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning the supplemental proposal by November 20, 2008, we will hold a public hearing on November 25, 2008. If you are interested in attending the public hearing, contact Janet Eck at (919) 541–7946 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

E. How is this document organized?

II. Background Information

On September 4, 2007 (72 FR 50716), EPA proposed several actions under section 112 of the Clean Air Act (CAA) with respect to petroleum refineries subject to the 1995 Refinery MACT 1 Rule (40 CFR part 63, subpart CC). Please refer to the 2007 proposal for additional background material. See 72 FR 50717–18. In response to comments received on the 2007 proposed rule, EPA further evaluated that proposal and is now supplementing its proposal with respect to cooling towers and storage vessels. In addition, as part of this notice, we are providing proposed revisions to the regulatory text to clarify and correct definitions, tables, and regulatory citations.

III. Summary of Supplemental Proposal

A. What are the proposed requirements to meet CAA sections 112(f)(2) and (d)(6) for Group 1 storage vessels?

In the September 2007 proposed rule, EPA initially proposed two regulatory options for storage vessels under CAA sections 112(f)(2) and (d)(6): Option 1 would require no revisions to the Refinery MACT 1 rule and Option 2 would add the requirements in 40 CFR 63.119(c)(2)(ix) and (x) for slotted guide poles on existing external floating roof (EFR) storage vessels (Refinery MACT 1 currently provides an exemption from these requirements for existing storage vessels). For more detail on the proposed options, please see 72 FR 50726–27.

Many commenters agreed that, of EPA's proposed options, Option 2, controls for slotted guide poles, is an appropriate and cost-effective level of control. However, several commenters supporting Option 2 requested that EPA revise the regulatory text associated with Option 2 to use clear terminology consistent with the most recent rules and technologies for storage vessels, *i.e.*, the rules at 40 CFR part 63, subpart WW and the Storage Tank Emission Reduction Partnership Program (STERPP) (described at 65 FR 19891). Specifically, commenters noted that subpart WW and STERPP include clearer descriptions and definitions of control options and provide clear and specific criteria for requirements such as the required height of a pole float and the position of a gasket.

Based on our review of public comments and subsequent analysis, we are proposing an additional option under CAA sections 112(f)(2) and (d)(6) for storage vessels. Specifically, we are proposing to remove the exemptions for existing EFR storage vessels and amend the requirements for all Group 1 storage vessels to be consistent with, and refer directly to, the requirements of 40 CFR part 63, subpart WW. The subpart WW requirements include the requirements for fitting controls on slotted guide poles, which were originally proposed under Option 2, as well as additional requirements for fittings for unslotted guide poles and other openings on EFR storage vessels. The proposed amendments also include the inspection, recordkeeping, and reporting requirements in subpart WW to account for the additional requirements for fitting controls for EFR storage vessels. It should be noted that, while subpart WW was preferred by the commenters and its stringency is equivalent to the HON, the existing 40 CFR part 63, subpart CC does not require all the specific tank fitting control requirements in the HON. While proposed Option 2 in the September 2007 proposal included some tank fitting control requirements not currently included in subpart CC, Option 2 did not include all of the tank fitting control requirements in the HON and subpart WW. Consequently, by proposing to require compliance with subpart WW, we are proposing full tank fitting controls for Group 1 storage vessels, and, therefore, today's proposed amendments are more stringent than the existing subpart CC rules and the subpart CC amendments proposed in September 2007.

The subpart WW requirements are being proposed because, in addition to providing clearer language for fitting controls, they provide an ample margin of safety to protect public health. This option reduces hazardous air pollutants (HAP) emissions and risks beyond the current maximum achievable control technology (MACT) standard using controls that are technically and economically feasible and that pose no adverse environmental impacts. We estimate that these changes would reduce the number of people at cancer risk greater than 1-in-1 million by 20,000 individuals and the cancer incidence by 0.002—0.003 cases per year (*i.e.*, prevent one cancer case every 400 years). This option would reduce emissions of volatile organic compounds (VOC) by 14,800 tons per year (tpy). Reducing VOC provides the added benefit of reducing ambient concentrations of ozone and may reduce fine particulate matter. The annualized cost impacts of this option are estimated to be a cost savings of $6.8 million. Our economic analysis (summarized later in this preamble) indicates that this cost will have little impact on the price and output of petroleum products.

Under this option, we are proposing that the owner or operator of an existing Group 1 storage vessel comply with the requirements in subpart WW of this part no later than 90 days after promulgation of these amendments. As provided in 40 CFR part 63, subpart WW, and for the reasons provided in Section IV, we are proposing that retrofitting floating roof tanks with the guide pole controls and certain other requirements is not required until the next time the vessel is emptied and degassed, or 10 years from the promulgation date of the final standards, whichever is sooner.

B. What are the proposed requirements for cooling towers under CAA sections 112(d)(2) and (f)(2)?

Under CAA sections 112(d)(2) and (d)(3), we proposed work practice standards for cooling towers that would require the owner or operator of a new or existing source to monitor for leaks in the cooling tower return lines from heat exchangers in organic HAP service (*i.e.*, lines that contain or contact fluids with 5 weight percent or greater of total organic HAP listed in Table 1 of the rule) and, where leaks are detected, to repair such leaks within a specified period of time. We proposed two options for new and existing sources, one based on the MACT floor analysis that accompanied the proposal, *i.e.*, the average emissions limitations achieved by the top 12 percent of the affected sources, and the other based on an analysis of beyond-the-floor techniques. For more detail on those options, please see 72 FR 50722–24.

In response to public comments that the terms used in the proposed cooling tower requirements needed to be defined and should focus on heat exchange systems, we are proposing to add several definitions to clarify the cooling tower monitoring requirements. We are proposing that the cooling tower requirements would apply to each ''heat exchange system.'' A ''heat exchange system'' means a device or series of devices used to transfer heat from process fluids to water without intentional direct contact of the process fluid with the water (*i.e.*, non-contact heat exchangers) and to transport and/or cool the water in a closed loop recirculation system (cooling tower system) or a once through system (*e.g.*, river or pond water). A ''heat exchange system'' can include one or more heat exchangers, all water lines to and from the heat exchanger(s), and, for recirculating systems, the cooling tower or towers that receive water from the heat exchanger(s).

In response to public comments that our floor analysis did not include existing State standards, we collected new information on existing State and local cooling towers provisions and revised our MACT floor analysis. More detail regarding the development of the revised MACT floor for existing and new sources based on review of these existing State requirements is provided in Section IV.B. of this preamble and in the docket memorandum entitled ''Cooling Towers: Control Alternatives and Impact Estimates'' (EPA–HQ–OAR–2003–0146). The revised proposed requirements are described below and are based on the revised MACT floor determination. Control techniques considered as beyond-the-floor options are described in Section IV.B of this preamble; we are not proposing any of these options because they were determined not to be cost-effective.

We are proposing that owners and operators of heat exchange systems that are in organic HAP service at new and existing sources would be required to conduct monthly sampling and analyses using the Texas Commission on Environmental Quality's (TCEQ) Modified El Paso method, Revision Number One, dated January 2003.[1] For existing sources, monthly cooling tower monitoring would begin within 18 months of promulgation of the final amendments. For new sources, monthly cooling tower monitoring would begin upon start-up or on the date of promulgation of these amendments, whichever is later. For existing sources, a leak would be defined as 6.2 parts per million by volume (ppmv) total strippable VOC in the stripping gas collected via the Modified El Paso method. For new sources, a leak would be defined as 3.1 ppmv total strippable VOC collected via the Modified El Paso method. The proposed amendments would require the repair of leaks in heat exchangers in organic HAP service within 45 days of the sampling event in which the leak was detected, unless a delay in repair is allowed. Delay in repair of the leak would be allowed until the next shutdown if the repair of the leak would require the process unit served by the leaking heat exchanger to be shut down and the total strippable VOC concentration is less than 62 ppmv. Delay in repair of the leak would also be allowed for up to 120 days if the total strippable VOC concentration is less than 62 ppmv and if critical parts or personnel are not available. The owner or operator would be required to continue monthly monitoring and repair the heat exchanger within 45 days if sampling results show that the leak exceeds 62 ppmv total strippable VOC. Within the first 3 years after promulgation of these amendments, delay in repair of a leak would also be allowed if the leak exceeds 62 ppmv total strippable VOC and the repair of the leak would require the process unit served by the leaking heat exchanger to be shut down and a shutdown is planned within 60 days or if critical parts or personnel are not available. Starting 3 years after promulgation of these amendments, delay of repair beyond 45 days would not be allowed if the leak exceeds 62 ppmv total strippable VOC.

Sampling for leaks would be conducted either at individual heat exchanger return lines (*i.e.*, water lines returning the water from the heat exchanger to the cooling tower) or the combined cooling tower inlet water location. That is, if the cooling tower services multiple heat exchangers, the

[1] ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference-see § 63.14).

owner or operator may elect to monitor only the heat exchangers ''in organic HAP service'' or monitor at the combined cooling tower inlet. If a leak is detected at the combined cooling tower inlet, the owner or operator may elect to fix the leak regardless of its location or begin monitoring at each heat exchanger ''in organic HAP service'' to document that the leak is not originating from a heat exchanger ''in organic HAP service.''

All new or existing refineries with a heat exchange system ''in organic HAP service'' would be required to maintain records of the heat exchangers in organic HAP service, the cooling towers associated with heat exchangers in organic HAP service, monthly monitoring results, and information for any delays in repair of a leak.

C. What other revisions and clarifications are we proposing?

In the September 2007 proposal, we proposed to amend Table 6 to 40 CFR part 63, subpart CC (General Provisions Applicability to Subpart CC) to bring the table up-to-date with current requirements of the General Provisions and clarify certain requirements. In conjunction with the publication of Table 6 in the proposal, we erroneously included a Table 11. We are clarifying that we are not proposing to include Table 11 and, thus, do not plan to include it as part of the final rule.

We received public comments that methyl ethyl ketone (also known as 2-butanone) has been delisted as a HAP. We are, therefore, proposing to revise Table 1 to delete methyl ethyl ketone from the HAP listed in Table 1.

We also received several public comments noting that cross-references to other subparts should be updated. Therefore, we are also proposing amendments to correct cross-references to subparts R and Y of part 63 in the rule text, as well as to correct the recordkeeping and reporting requirement cross-references in Tables 4 and 5 of subpart CC to part 63. We are also proposing to clarify applicability sections by specifying the promulgation date of the original subpart CC. Finally, we are proposing amendments to clarify how owners and operators should comply with overlapping standards for equipment leaks. These proposed amendments are included to clarify the requirements of subpart CC.

IV. Rationale for Supplemental Proposed Amendments

A. Storage Vessels

In response to public comments on the original proposal, we revised and updated the analysis of the options we proposed in September 2007. We also evaluated a wider range of control options, such as the requirements included in the Generic Storage Vessel MACT (40 CFR part 63, subpart WW) and STERPP, as well as other specific controls suggested by the commenters. A detailed explanation of our impacts analysis for each of the options described in this section is provided in ''Storage Vessels: Revised Control Options and Impact Estimates'' in Docket ID No. EPA–HQ–OAR–2003–0146.

The storage vessel controls in 40 CFR part 63, subpart WW and for STERPP include several compliance options for controlling slotted guide poles as well as requirements for additional fitting controls on other EFR deck openings. We determined that, based on emission modeling runs using a model gasoline storage vessel, the STERPP and subpart WW requirements for slotted guide poles achieve the same or better emission reduction efficiencies as the originally proposed Option 2 for Group 1 storage vessels. And, while additional deck fitting controls on EFR storage vessels contained in the STERPP and subpart WW provide only a tenth of the emission reductions as the guide pole controls, these controls (primarily use of gaskets) are inexpensive. As seen in Table 1 of this preamble, our cost analysis indicates that these fitting controls are cost-effective. Therefore, we are proposing an additional option that would require these additional fitting controls for existing Group 1 storage vessels covered by Refinery MACT 1.

Based on our evaluation of the STERPP and 40 CFR part 63, subpart WW control requirements, we determined that those standards require solid, or unslotted, guide poles to be gasketed and have a wiper system, and we evaluated the impacts of also adding these requirements to Refinery MACT 1. We determined that, provided the retrofits could be performed without additional emissions and cost associated with an unplanned emptying and degassing of the storage vessel (*i.e.*, during a turnaround or when the vessel is taken out of service for maintenance/repair), the control requirements for solid guide poles were cost-effective. That is, over a 10-year cycle using a 7-percent annual interest rate, these controls yield a net cost savings (from reduced product losses). The combination of additional deck fitting controls and full guide pole controls is presented in Table 1 as ''full deck and guide pole controls.'' Consequently, we are proposing as an additional option to amend Refinery MACT 1 to refer directly to the storage vessel control requirements in subpart WW. As the cost-effectiveness of the control retrofits are predicated on a lack of additional emissions and cost associated with emptying and degassing the storage vessel, we are providing up to 10 years for compliance with these requirements as provided for in 40 CFR 63.1063(a)(ix) of subpart WW. Because these controls are cost-effective and incrementally reduce public exposure, we believe this option, in addition to the two options proposed earlier, would provide an ample margin of safety and meet the requirements of the technology review.

TABLE 1—NATIONWIDE IMPACTS OF VARIOUS STORAGE VESSEL REGULATORY OPTIONS

Control option	Total capital investment ($ million)	Total annualized cost without recovery ($ million)	Product recovery credit ($ million)	Total annualized costs ($ million/yr)	HAP emissions (tons per year) [a]	HAP emission reductions (tons per year)	Cost-effectiveness ($/ton HAP)
Option 1: Baseline (proposed at 72 FR 50726–27) [a]	0	0	0	0	2,970	0	([b])
Option 2: Slotted guide pole sleeves (proposed at 72 FR 50726–27) [b]	5.3	0.76	−3.3	−2.6	2,300	660	−3,900
Option 3: Full deck and guide pole controls	10	1.5	−8.3	−6.8	1,300	1,640	−4,100

[a] Costs and emission reductions have been revised since September 2007 proposal; see memorandum entitled ''Storage Vessels: Revised Control Options and Impact Estimates'' in Docket ID No. EPA–HQ–OAR–2003–0146 for details on these revisions.
[b] Not applicable.

Table 2 of this preamble presents the risk reduction associated with the control option for storage vessels.

TABLE 2—INHALATION RISK IMPACTS OF REGULATORY ALTERNATIVE FOR STORAGE VESSELS

Parameter	Baseline option 1	Control option 2	Control option 3
Risk to Most Exposed Individual:			
Cancer (in 1 million)	30	30	30
Noncancer (HI)	0.3	0.3	0.3
Size of Population at Cancer Risk:			
> 100-in-1 million	0	0	0
> 10-in-1 million	4,000	3,900	3,800
> 1-in-1 million	460,000	450,000	440,000
Number of Plants at Cancer Risk Level:			
> 100-in-1 million	0	0	
> 10-in-1 million	23	23	22
> 1-in-1 million	88	88	87
Population with HI > 1 [1]	0	0	0
No of Plants with HI > 1	0	0	0
Annual Cancer Incidence [2]	0.032–0.049	0.031–0.048	0.030–0.046
Cancer Incidence Reduction (Percent)	([3])	2	5
HAP Emission Reduction (Percent)	([3])	4	10

[1] If the Hazard Index (HI) is calculated to be less than or equal to 1, then no adverse non-cancer chronic health effects are expected as a result of the exposure. However, an HI exceeding 1 does not translate to a probability that adverse effects occur. Rather, it suggests the possibility that adverse health effects may occur. Acute non-cancer effects not estimated in this analysis.
[2] The range of cancer incidence reflects the cancer potency range of benzene, either end of which is considered equally plausible.
[3] Not applicable.

B. Cooling Towers

To respond to public comments that our floor analysis did not include existing State standards, we collected additional information on cooling tower requirements for multiple petroleum refineries in several States. Using these data, we reanalyzed the MACT floor for new and existing sources and identified 39 petroleum refineries in California, Illinois, Indiana, Louisiana, Minnesota, and Texas with permit requirements for HAP and/or VOC in cooling tower return water along with cooling tower monitoring requirements. We note that the permit requirements are based on calculated emission estimates using the water recirculation rates and monitored concentrations in the cooling waters. Consequently, the permit requirements effectively define a maximum allowable concentration limit of strippable organics in the cooling water so that the effective leak definition could be determined for each cooling tower. We further note that no refineries directly measure cooling tower emissions, and we reaffirm our conclusion that cooling tower work practice standards are appropriate because the emissions are not emitted through a stack or other conveyance and are, therefore, not practically measurable.

We ranked cooling tower requirements based on the projected emissions that would occur given the specific cooling tower monitoring provision. Based on preliminary calculations performed using the cooling tower impacts model (see ''Cooling Towers: Control Alternatives and Impact Estimates'' memorandum in Docket ID No. EPA–HQ–OAR–2003–0146), the leak definition was the primary factor influencing the emissions limitations achieved by a cooling tower monitoring program; the second most important factor was the specification of time frames for completing repairs and provisions or limitations for delay of repair. Monitoring frequency, while a contributing factor to overall cooling tower emissions performance, was not as important as the leak definition and specified repair deadlines. We selected the 6th percentile cooling tower as indicative of the average emission limitation achieved by the best performing 12 percent of cooling towers. Based on this, we determined that the MACT floor for cooling towers at existing sources is cooling water sampling on a monthly basis for total strippable VOC compounds, where a leak is defined as 6.2 ppmv of total strippable VOC compounds in the stripping air of the TCEQ Modified El Paso method. We note that this leak definition is equivalent to the controlled emission factor in AP–42,[2] and that many refineries use this controlled emission factor when estimating and reporting their cooling tower emissions.

[2] U.S. EPA (Environmental Protection Agency). 1995. Compilation of Air Pollutant Emission Factors. Sections 5.1. AP–42. Office of Air Quality Planning and Standards, Research Triangle Park, NC.

Additionally, based on this MACT floor analysis, we determined that the existing source MACT floor repair requirements include identifying the source of the leak and repairing within 45 days of originally finding the leak. Delay of repair is allowed under certain conditions if the total strippable VOC is less than 62 ppmv, but is not allowed if the total strippable VOC concentration is equal to or greater than 62 ppmv. When total strippable VOC is less than 62 ppmv, delay of repair is allowed for up to 120 days if the necessary equipment, parts, or personnel are not available, and delay of repair is allowed until the next shutdown if a shutdown is required to effect the repair. For delay of repair, the refinery must document the basis for the delay, including the reason for delaying repair, provide a schedule for completing the repair, and determine the emissions of HAP during the time duration of the delay.

While these delay of repair provisions are based on our MACT floor assessment, we note that some of the permits for facilities in the top 12 percent provide time to implement the monitoring requirements before the ban on delay of repairs for leaks exceeding 62 ppmv becomes effective. We recognize that when facilities first start to monitor their cooling towers, the likelihood of finding large leaks is much greater than after a monthly monitoring program has been implemented. As such, when first implementing the monthly monitoring, they may identify heat exchange systems that have leaks exceeding 62 ppmv, but may not have the spare parts or adequate time to plan for the repair of the heat exchange system that would typically be available after the monthly monitoring program has been in place for some time. As such, we propose to phase-in the cooling tower requirements for existing sources. The monitoring and leak repair provisions for existing sources would become effective no later than 18 months after promulgation of the final rule; however, the delay of repair is allowed regardless of the leak size for the first 18 months of the monitoring program. No later than 3 years from the promulgation date of these amendments, no delay of repair is allowed for leaks exceeding 62 ppmv total strippable VOC.

The new source MACT for cooling towers must be no less stringent than the best-performing refinery cooling towers. In our ranking of the information collected on monitoring requirements, the best-performing cooling tower has a leak definition of 3.1 ppmv of strippable total organics as methane in the stripping air using monthly Modified El Paso method sampling and analysis. As such, the MACT floor for cooling towers at new sources is monthly cooling water sampling for total strippable VOC, where a leak is defined as 3.1 ppmv of total strippable VOC in the stripping air using the Modified El Paso method. The repair requirements for the top-performing cooling towers include identifying the source of the leak and repairing within 45 days of originally finding the leak. Delay of repair for the top-performing cooling towers is allowed if strippable total VOC concentration is less than 62 ppmv, but not allowed if strippable total VOC concentration is equal to or greater than 62 ppmv. That is, the delay of repair provisions for the new source MACT floor cooling towers are the same as those for an existing source MACT floor cooling towers.

We revised our cooling tower emissions estimates since the 2007 proposal based on reanalysis of the emissions inventory information obtained from TCEQ for the 2004 reporting year, as well as other information collected regarding cooling tower monitoring provisions and flow data from the Industrial Cooling Tower National Emission Standards for Hazardous Air Pollutants (NESHAP). Model cooling tower emissions for each refinery facility in the nation were estimated based on crude throughput data which were used to estimate total cooling water flow rates and generic refinery stream VOC and HAP compositions. These data were used with controlled and uncontrolled AP–42 emission factors for VOC emissions from cooling towers and the fraction of cooling towers with specific monitoring requirements to estimate cooling tower baseline HAP emissions. The nationwide baseline HAP emissions were estimated at 770 tpy as compared to a baseline estimate of greater than 3,000 tpy in the 2007 proposal. These emissions compare reasonably well with the organic HAP emissions estimate based on the TCEQ data, as revised, to correct a reporting error identified by a public commenter. From the updated TCEQ 2004 database, we estimated the organic HAP emissions from cooling towers to be 95 tpy for Texas refineries alone. Extrapolation of the Texas data based on direct crude distillation capacity provides a nationwide emissions estimate for cooling towers of 352 tpy of organic HAP. However, refineries in Texas had the most stringent cooling tower monitoring provisions of any of the State requirements, and the Texas refineries used the controlled AP–42 emission factor for their cooling tower emission estimates. If the non-Texas refineries operate nearer the uncontrolled AP–42 emission factor, nationwide cooling tower emissions are projected to be 2,300 tpy of organic HAP. While there is significant uncertainty in the actual cooling tower emission estimate, the projected baseline emissions fall easily within the range expected based on reanalysis of the Texas dataset.

Following reanalysis of the MACT floor for cooling towers, we also conducted a revised cost analysis for the MACT floor level of control. We included costs for a strippable total VOC monitoring system, increased the time needed for sampling and analysis for each cooling tower, and added costs for sampling and analysis for specific heat exchangers for triggered monitoring following identification of a cooling tower leak. We also increased the cost associated with repairing a leaking heat exchanger. The cost-effectiveness of the MACT floor control for cooling towers at both new and existing sources was approximately $4,700 per ton of HAP reduced when considering product recovery credits and approximately $8,200 per ton when product recovery credits were not included. See Table 3 of this preamble.

We also evaluated the costs of applying the new source leak definition to existing sources and implementing this option with continuous strippable total VOC monitoring systems as a beyond-the-MACT floor control options. The first alternative reduces an additional 40 tpy of HAP emissions at an incremental cost-effectiveness of almost $6,000 per ton on HAP emission reduction and the second option with continuous monitoring reduces HAP emissions by an additional 10 tpy and has an incremental cost-effectiveness of almost $600,000 per ton of HAP reduced.

Based on this analysis, we conclude that the beyond-the-MACT floor control options are not cost-effective and we are proposing standards for cooling towers commensurate with the MACT floor determinations under CAA sections 112(d)(2) and (3). Further, we are proposing that the MACT floor level of control also provides an ample margin of safety and satisfies the risk review requirements under CAA section 112(f)(2). For more information on the costing methodology, see Table 3 of this preamble and the ''Cooling Towers: Control Alternatives and Impact Estimates'' memorandum in the docket (Docket ID No. EPA–HQ–OAR–2003–0146).

TABLE 3—NATIONWIDE IMPACTS FOR COOLING TOWER OPTIONS

Control option	Total capital investment ($ million)	Total annualized cost without recovery ($ million)	Product recovery credit ($ million)	Total annualized costs ($ million)	HAP emissions (tpy)	HAP emission reductions (tpy)	Cost-effectiveness ($/ton HAP)	
							Overall	Incremental
MACT Floor	16	5.2	−2.2	3.0	140	630	4,700	4,700
Beyond-the-floor Alternative 1	16	5.5	−2.3	3.2	100	670	4,700	5,700
Beyond-the-floor Alternative 2	72	11	−2.2	8.8	90	680	13,000	580,000

Table 4 of this preamble provides information relevant to our proposed ample margin of safety determination under CAA section 112(f)(2). Specifically, the table presents the pre-MACT risk, the risk associated with the proposed MACT floor which is the baseline for our residual risk analysis, and the risk reduction for the first beyond the MACT floor alternative for cooling towers. Reductions in risk for the second alternative are not shown because this alternative is clearly not cost-effective.

TABLE 4—INHALATION RISK IMPACTS FOR COOLING TOWERS

Parameter	Baseline pre-MACT	MACT floor (risk baseline)	Beyond the MACT floor alternative 1
Risk to Most Exposed Individual:			
Cancer (in 1 million)	30	30	30
Noncancer (HI)	0.3	0.3	0.3
Size of Population at Cancer Risk:			
> 100-in-1 million	0	0	0
> 10-in-1 million	4,000	3,900	3,800
> 1-in-1 million	460,000	450,000	440,000
Number of Plants at Cancer Risk Level:			
> 100-in-1 million	0	0	0
> 10-in-1 million	23	22	22
> 1-in-1 million	88	88	87
Population with HI > 1 [a]	0	0	0
No of Plants with HI > 1	0	0	0
Annual Cancer Incidence [b]	0.032–0.049	0.031–0.047	0.030–0.047
Cancer Incidence Reduction (Percent)	NA	3	4
HAP Emission Reduction (Percent)	NA	4	6

[a] If the Hazard Index (HI) is calculated to be less than or equal to 1, then no adverse non-cancer chronic health effects are expected as a result of the exposure. However, an HI exceeding 1 does not translate to a probability that adverse effects occur. Rather, it suggests the possibility that adverse health effects may occur. Acute non-cancer effects not estimated in this analysis.

[b] The range of cancer incidence reflects the cancer potency range of benzene, either end of which is considered equally plausible.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to OMB for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned ICR number 2334.01.

The information requirements in the proposed amendments include monitoring, recordkeeping, and reporting provisions for storage vessels and cooling towers. Owners or operators of storage vessels must comply with the inspection, recordkeeping, and reporting requirements in 40 CFR part 63, subpart WW. Owners or operators of cooling towers must conduct monthly monitoring of each heat exchanger to identify and repair leaks. Records of monitoring and repair data also must be kept. All respondents must submit one-time notifications and semiannual compliance reports.

The information collection requirements in the proposed amendments are needed by EPA and delegated authorities to determine that compliance has been achieved. The recordkeeping and reporting requirements in this proposed rule are based on the information collection requirements in the part 63 General Provisions (40 CFR part 63, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 13,714 labor hours per year at a cost of $1,056,081 for one new refinery and 153 existing refineries. The average annual reporting burden is 353.9 labor hours for 205.9 total annual responses; the average annual burden per response is 1.72 hours. Responses include notifications of compliance status for cooling towers and storage vessels at new and existing refineries, notification of initial startup for storage vessels at one new refinery, and semiannual compliance reports containing information on cooling towers and storage vessels at new and existing refineries. Capital/startup costs are estimated at $16,306,000. The operation and maintenance costs associated with the proposed rule amendments are estimated at $61,711. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this action, which includes this ICR, under Docket ID No. EPA–HQ–OAR–2003–0146. Submit any comments related to the ICR for the proposed rule to EPA and OMB. See the **ADDRESSES** section at the beginning of this preamble for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC

20503, Attention: Desk Office for EPA. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after November 10, 2008, a comment to OMB is best assured of having its full effect if OMB receives it by December 10, 2008. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses at 13 CFR 121.201 (a firm having no more than 1,500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Based on our economic impact analysis, the proposed amendments will result in a nationwide net annualized cost savings of about $3.8 million due to a return of about $10.5 million per year from reductions in product losses. Only one oil refining entity would incur net annualized costs as a result of the proposed amendments; all other refinery entities would have net savings. This refinery entity is a small parent entity. Net annualized costs for this affected small entity are well below 0.01 percent of their revenue; therefore, no ''significant'' adverse economic impacts are expected for any small entity. Thus, the costs associated with the proposed amendments will not result in any ''significant'' adverse economic impact for any small entity. For more information, please refer to the economic impact analysis that is in the docket for this rulemaking.

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the proposed rule on small entities. We held meetings with industry trade associations and company representatives to discuss the proposed rule and have included provisions for small facilities that address their concerns. We continue to be interested in the potential impacts of the proposed action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector.

The proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any one year. As discussed earlier in this preamble, these amendments result in nationwide net savings to the private sector. Therefore, the proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed amendments contain no requirements that apply to such governments, and impose no obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The proposed amendments do not have federalism implications. They would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed amendments add control and monitoring requirements. They do not modify existing responsibilities or create new responsibilities among EPA Regional offices, States, or local enforcement agencies. Thus, Executive Order 13132 does not apply to the proposed amendments.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed amendments will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The proposed amendments impose no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action From tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the revised Residual Risk Assessment for MACT 1 Petroleum Refining Sources, which is available in the docket.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The proposed amendments are not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the proposed amendments are not likely to have any adverse energy effects because they result in overall savings due to product recovery.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113, 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

This proposed rule involves technical standards. EPA proposes to use ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources,'' Revision Number One, dated January 2003, and will incorporate the method by reference (see 40 CFR 63.14). This method is available at *http://www.tceq.state.tx.us/assets/public/implementation/air/sip/sipdocs/2002–12–HGB/02046sipapp_ado.pdf* , or from the Texas Commission on Environmental Quality (TCEQ) Library, Post Office Box 13087, Austin, Texas, 78711–3087, telephone number (512) 239–0028. This method was chosen based on public comments regarding the sampling and analysis of air emissions from cooling towers, and is required in these proposed amendments instead of the originally proposed requirements in 40 CFR 61.355(c) for water sample collection, and EPA Method 8260B for analysis of water samples taken from cooling tower return lines.

This TCEQ method utilizes a dynamic or flow-through system for air stripping a sample of the water and analyzing the resultant off-gases for VOC using a common flame ionization detector (FID) analyzer. While direct water analyses, such as purge and trap analyses of water samples utilizing gas chromatography and/or mass spectrometry techniques, have been shown to be effective for cooling tower measurements of heavier molecular weight organic compounds with relatively high boiling points, it has been determined that this approach may be ineffective for capture and measurement of VOC with lower boiling points, such as ethylene, propylene, 1,3-butadiene, and butenes. The VOC with a low molecular weight and boiling point are generally lost in the sample collection step of purge/trap type analyses. Consequently, this TCEQ air stripping method is used for cooling tower and other applicable water matrix emission measurements when VOC with boiling points below 140o F need to be evaluated.

Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the proposed amendments.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in the regulations.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that these proposed amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

The proposed amendments add new control requirements to established national standards for petroleum refineries to address risk remaining after implementation of the 1995 standards and, thus, decrease the amount of toxic emissions to which all affected populations are exposed.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: October 30, 2008.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[Amended]

2. Section 63.14 is amended by adding paragraph (n) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(n) The following material is available from the Texas Commission on Environmental Quality (TCEQ) Library, Post Office Box 13087, Austin, Texas 78711–3087, telephone number (512) 239–0028 or at *http://www.tceq.state.tx.us/assets/public/implementation/air/sip/sipdocs/2002–12–HGB/02046sipapp_ado.pdf* :

(1) ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'', Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003, IBR approved for § 63.654(c)(1) and (g)(4)(i) of Subpart CC of this part.

(2) [Reserved]

Subpart CC—[Amended]

3. Section 63.640 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (b)(2);

c. Revising paragraph (c) introductory text;

d. Revising paragraphs (c)(6) and (7);

e. Adding paragraph (c)(8);

f. Revising paragraph (e) introductory text, and paragraph (e)(2)(iii);

g. Revising paragraph (f) introductory text, and paragraph (f)(5);

h. Revising paragraph (h) introductory text;

i. Revising paragraphs (h)(1) and (2);

j. Revising paragraph (h)(4);

k. Adding paragraph (h)(6);

l. Revising paragraphs (k)(1), (k)(2)(i), (k)(2)(ii), (k)(2)(iii), and the first sentence in paragraph (k)(2)(vi);

m. Revising paragraph (l) introductory text, paragraph (l)(2)(i), the first sentence in paragraph (l)(2)(ii), the first sentence in paragraph (l)(3) introductory text, paragraph (l)(3)(i), paragraph (l)(3)(ii), the first sentence in paragraph (l)(3)(vi), and the first sentence in paragraph (l)(3)(vii);

n. Revising paragraph (n) introductory text and paragraphs (n)(1), (n)(2), (n)(8)(ii), and (n)(9)(i);

o. Removing and reserving paragraph (n)(5); and

p. Revising paragraph (p).

§ 63.640 Applicability and designation of affected source.

(a) This subpart applies to petroleum refining process units and to related emissions points that are specified in paragraphs (c)(5) through (8) of this section that are located at a plant site and that meet the criteria in paragraphs (a)(1) and (2) of this section:

* * * * *

(b) * * *

(2) The determination of applicability of this subpart to petroleum refining process units that are designed and operated as flexible operation units shall be reported as specified in § 63.655(h)(6)(i).

(c) For the purposes of this subpart, the affected source shall comprise all emissions points, in combination, listed in paragraphs (c)(1) through (8) of this section that are located at a single refinery plant site.

* * * * *

(6) All marine vessel loading operations located at a petroleum refinery meeting the criteria in paragraph (a) of this section and the applicability criteria of subpart Y, § 63.560;

(7) All storage vessels and equipment leaks associated with a bulk gasoline terminal or pipeline classified under Standard Industrial Classification code 2911 located within a contiguous area and under common control with a refinery meeting the criteria in paragraph (a) of this section; and

(8) All heat exchange systems associated with petroleum refining process units meeting the criteria in paragraph (a) of this section and which are in organic hazardous air pollutants (HAP) service as defined in this subpart.

* * * * *

(e) The owner or operator of a storage vessel constructed on or before August 18, 1994, shall follow the procedures specified in paragraphs (e)(1) and (e)(2) of this section to determine whether a storage vessel is part of a source to which this subpart applies. The owner or operator of a storage vessel constructed after August 18, 1994, shall follow the procedures specified in paragraphs (e)(1), (e)(2)(i), and (e)(2)(ii) of this section to determine whether a storage vessel is part of a source to which this subpart applies.

* * * * *

(2) * * *

(iii) If the predominant use of a storage vessel varies from year to year, then the applicability of this subpart shall be determined based on the utilization of that storage vessel during the year preceding August 18, 1995. This determination shall be reported as specified in § 63.655(h)(6)(ii).

(f) The owner or operator of a distillation unit constructed on or before August 18, 1994, shall follow the procedures specified in paragraphs (f)(1) through (f)(4) of this section to determine whether a miscellaneous process vent from a distillation unit is part of a source to which this subpart applies. The owner or operator of a distillation unit constructed after August 18, 1994, shall follow the procedures specified in paragraphs (f)(1) through (f)(5) of this section to determine whether a miscellaneous process vent from a distillation unit is part of a source to which this subpart applies.

* * * * *

(5) If the predominant use of a distillation unit varies from year to year, then the applicability of this subpart shall be determined based on the utilization of that distillation unit during the year preceding August 18, 1995. This determination shall be reported as specified in § 63.655(h)(6)(iii).

* * * * *

(h) Except as provided in paragraphs (k), (l), or (m) of this section, sources subject to this subpart are required to achieve compliance on or before the dates specified in paragraphs (h)(1) through (6) of this section.

(1) Except as provided in paragraphs (h)(1)(i) and (ii) of this section, new sources that commence construction or reconstruction after July 14, 1994, shall be in compliance with this subpart upon initial startup or August 18, 1995, whichever is later.

(i) Heat exchange systems that commence construction or reconstruction after September 4, 2007, shall be in compliance with new source standards in § 63.654 upon initial startup or by [the date of publication of the final amendments in the **Federal Register**], whichever is later.

(ii) New sources shall be in compliance with § 63.646 upon initial startup or [90 days after the date of publication of the final amendments in the **Federal Register**], whichever is later.

(2) Except as provided in paragraphs (h)(3) through (h)(6) of this section, existing sources shall be in compliance with this subpart no later than August 18, 1998, except as provided in § 63.6(c)(5) of subpart A of this part, or unless an extension has been granted by the Administrator as provided in § 63.6(i) of subpart A of this part.

* * * * *

(4) All Group 1 storage vessels that are part of an existing source shall be in compliance with § 63.646 of this subpart no later than [90 days after publication of the final amendments in the **Federal Register**].

* * * * *

(6) Heat exchange systems that commence construction or reconstruction on or before September 4, 2007, shall be in compliance with the existing source standards in § 63.654 no later than [18 months after publication of the final amendments in the **Federal Register**].

* * * * *

(k) * * *

(1) The reconstructed source, addition, or change shall be in compliance with the new source requirements upon initial startup of the reconstructed source or by August 18, 1995, whichever is later; and

(2) * * *

(i) The application for approval of construction or reconstruction shall be submitted as soon as practical before the construction or reconstruction is planned to commence (but it need not be sooner than November 16, 1995);

(ii) The Notification of Compliance Status report as required by § 63.655(f) for a new source, addition, or change;

(iii) Periodic Reports and other reports as required by § 63.655(g) and (h);

* * * * *

(vi) Reports and notifications required by § 63.428(b), (c), (g)(1), (h)(1) through (h)(3), and (k) of subpart R. * * *

* * * * *

(l) If an additional petroleum refining process unit is added to a plant site or if a miscellaneous process vent, storage vessel, gasoline loading rack, marine tank vessel loading operation, or heat exchange system that meets the criteria in paragraphs (c)(1) through (8) of this section is added to an existing petroleum refinery or if another deliberate operational process change creating an additional Group 1 emissions point(s) (as defined in § 63.641) is made to an existing petroleum refining process unit, and if the addition or process change is not subject to the new source requirements as determined according to paragraphs

(i) or (j) of this section, the requirements in paragraphs (l)(1) through (3) of this section shall apply. Examples of process changes include, but are not limited to, changes in production capacity, or feed or raw material where the change requires construction or physical alteration of the existing equipment or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph and paragraph (m) of this section, process changes do not include: Process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status report required by § 63.655(f).

* * * * *

(2) * * *

(i) If a petroleum refining process unit is added to a plant site or an emission point(s) is added to any existing petroleum refining process unit, the added emission point(s) shall be in compliance upon initial startup of any added petroleum refining process unit or emission point(s) or by August 18, 1998, whichever is later.

(ii) If a deliberate operational process change to an existing petroleum refining process unit causes a Group 2 emission point to become a Group 1 emission point (as defined in § 63.641), the owner or operator shall be in compliance upon initial startup or by August 18, 1998, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the change. * * *

(3) The owner or operator of a petroleum refining process unit or of a storage vessel, miscellaneous process vent, wastewater stream, gasoline loading rack, marine tank vessel loading operation, or heat exchange system meeting the criteria in paragraphs (c)(1) through (8) of this section that is added to a plant site and is subject to the requirements for existing sources shall comply with the reporting and recordkeeping requirements that are applicable to existing sources including, but not limited to, the reports listed in paragraphs (l)(3)(i) through (vii) of this section. * * *

(i) The Notification of Compliance Status report as required by § 63.655(f) for the emission points that were added or changed;

(ii) Periodic Reports and other reports as required by § 63.655(g) and (h);

* * * * *

(vi) Reports and notifications required by § 63.428(b), (c), (g)(1), (h)(1) through (h)(3), and (k) of subpart R. * * *

(vii) Reports and notifications required by §§ 63.565 and 63.567 of subpart Y. * * *

* * * * *

(n) Overlap of subpart CC with other regulations for storage vessels. As applicable, paragraphs (n)(1), (n)(3), (n)(4), (n)(6), and (n)(7) of this section apply for Group 2 storage vessels. Beginning [90 days after publication of the final amendments in the **Federal Register**], paragraph (n)(2) of this section applies for Group 1 storage vessels.

(1) After the compliance dates specified in paragraph (h) of this section, a Group 2 storage vessel that is part of an existing source and is also subject to the provisions of 40 CFR part 60, subpart Kb, is required to comply only with the requirements of 40 CFR part 60, subpart Kb, except as provided in paragraph (n)(8) of this section.

(2) After the compliance dates specified in paragraph (h) of this section, a Group 1 storage vessel that is subject to 40 CFR part 60, subparts K, Ka, or Kb is required to comply only with this subpart.

* * * * *

(5) [Reserved]

* * * * *

(8) * * *

(ii) If the owner or operator determines that it is unsafe to perform the seal gap measurements required in 40 CFR 60.113b(b) or to inspect the vessel to determine compliance with 40 CFR 60.113b(a) because the roof appears to be structurally unsound and poses an imminent danger to inspecting personnel, the owner or operator shall comply with the requirements in either § 63.1063(c)(2)(iv)(A) or § 63.1063(c)(2)(iv)(B) of subpart WW.

* * * * *

(9) * * *

(i) If the owner or operator determines that it is unsafe to perform the seal gap measurements required in 40 CFR 60.113a(a)(1) because the floating roof appears to be structurally unsound and poses an imminent danger to inspecting personnel, the owner or operator shall comply with the requirements in either § 63.1063(c)(2)(iv)(A) or § 63.1063(c)(2)(iv)(B) of subpart WW.

* * * * *

(p) Overlap of subpart CC with other regulations for equipment leaks.

(1) After the compliance dates specified in paragraph (h) of this section, equipment leaks that are also subject to the provisions of 40 CFR parts 60 and 61 standards promulgated before September 4, 2007, are required to comply only with the provisions specified in this subpart.

(2) Equipment leaks that are also subject to the provisions of 40 CFR part 60, subpart GGGa, are required to comply only with the provisions specified in 40 CFR part 60, subpart GGGa.

* * * * *

4. Section 63.641 is amended by:

a. Adding, in alphabetical order, definitions for ''Cooling tower,'' ''Cooling tower return line,'' ''Heat exchange system,'' and ''Heat exchanger exit line''; and

b. Revising the definitions of ''Continuous record'' and ''Reference control technology for storage vessels'' to read as follows:

§ 63.641 Definitions.

* * * * *

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every hour and recorded at the frequency specified in § 63.655(i).

* * * * *

Cooling tower means a heat removal device used to remove the heat absorbed in circulating cooling water systems by transferring the heat to the atmosphere using natural or mechanical draft.

Cooling tower return line means the main water trunk lines at the inlet to the cooling tower before exposure to the atmosphere.

* * * * *

Heat exchange system means a device or series of devices used to transfer heat from process fluids to water without intentional direct contact of the process fluid with the water (*i.e.*, non-contact heat exchanger) and to transport and/or cool the water in a closed loop recirculation system (cooling tower system) or a once through system (*e.g.,* river or pond water). A *heat exchange system* can include one or more heat exchangers, all water lines to and from the heat exchanger(s), and, for recirculating systems, the cooling tower or towers that receive water from the heat exchanger(s).

Heat exchanger exit line means the cooling water line at the exit of the heat exchanger, where cooling water leaves the heat exchanger and is routed to the cooling tower return line.

* * * * *

Reference control technology for storage vessels means either:

(1) An internal floating roof meeting the specifications of §§ 63.1063(a)(1)(i), (a)(2), and (b) of subpart WW;

(2) An external floating roof meeting the specifications of §§ 63.1063(a)(1)(ii), (a)(2), and (b) of subpart WW;

(3) An external floating roof converted to an internal floating roof meeting the

specifications of §§ 63.1063(a)(1)(ii), (a)(2), and (b); or

(4) A closed-vent system to a control device that reduces organic HAP emissions by 95 percent, or to an outlet concentration of 20 parts per million by volume (ppmv).

(5) For purposes of emissions averaging, these four technologies are considered equivalent.

* * * * *

5. Section 63.642 is amended by:

a. Revising paragraph (k)(1); and

b. Revising paragraph (l)(2) to read as follows:

§ 63.642 General standards.

* * * * *

(k) * * *

(1) The owner or operator using this compliance approach shall also comply with the requirements of § 63.655 as applicable.

* * * * *

(l) * * *

(2) Comply with the requirements of §§ 63.652, 63.653, and 63.655, as applicable.

* * * * *

6. Section 63.644 is amended by:

a. Revising paragraph (b) introductory text;

b. Revising paragraph (c)(1);

c. Revising paragraph (d); and

d. Revising paragraph (e) to read as follows:

§ 63.644 Monitoring provisions for miscellaneous process vents.

* * * * *

(b) An owner or operator of a Group 1 miscellaneous process vent may request approval to monitor parameters other than those listed in paragraph (a) of this section. The request shall be submitted according to the procedures specified in § 63.655(h). Approval shall be requested if the owner or operator:

* * * * *

(c) * * *

(1) Install, calibrate, maintain, and operate a flow indicator that determines whether a vent stream flow is present at least once every hour. Records shall be generated as specified in § 63.655(h) and (i). The flow indicator shall be installed at the entrance to any bypass line that could divert the vent stream away from the control device to the atmosphere; or

* * * * *

(d) The owner or operator shall establish a range that ensures compliance with the emissions standard for each parameter monitored under paragraphs (a) and (b) of this section. In order to establish the range, the information required in § 63.655(f)(3) shall be submitted in the Notification of Compliance Status report.

(e) Each owner or operator of a control device subject to the monitoring provisions of this section shall operate the control device in a manner consistent with the minimum and/or maximum operating parameter value or procedure required to be monitored under paragraphs (a) and (b) of this section. Operation of the control device in a manner that constitutes a period of excess emissions, as defined in § 63.655(g)(6), or failure to perform procedures required by this section shall constitute a violation of the applicable emission standard of this subpart.

7. Section 63.645 is amended by revising paragraph (h)(2) to read as follows:

§ 63.645 Test methods and procedures for miscellaneous process vents.

* * * * *

(h) * * *

(2) Where the recalculated TOC emission rate is greater than 33 kilograms per day for an existing source or greater than 6.8 kilograms per day for a new source, the owner or operator shall submit a report as specified in § 63.655(f), (g), or (h) and shall comply with the appropriate provisions in § 63.643 by the dates specified in § 63.640.

* * * * *

8. Section 63.646 is amended by:

a. Revising paragraph (a);

b. Revising paragraphs (b) introductory text and (b)(1);

c. Revising paragraph (c);

d. Revising paragraph (d);

e. Revising paragraph (e);

f. Revising paragraph (f);

g. Revising paragraph (g); and

h. Removing paragraphs (h) through (l) to read as follows:

§ 63.646 Storage vessel provisions.

(a) On and after the applicable compliance date for a Group 1 storage vessel located at a new or existing source as specified in § 63.640(h)(1)(ii) and (h)(4), the owner or operator of a Group 1 storage vessel that is part of a new or existing source shall comply with the requirements of subpart WW according to the requirements in paragraphs (b) through (g) of this section.

(b) As used in this section, all terms not defined in § 63.641 shall have the meaning given them in 40 CFR part 63, subpart A or WW. The definitions of ''Group 1 storage vessel'' and ''storage vessel'' in § 63.641 shall apply in lieu of the definition of ''storage vessel'' in § 63.1061 of subpart WW.

(1) An owner or operator may use good engineering judgment or test results to determine the stored liquid weight percent total organic HAP for purposes of group determination. Data, assumptions, and procedures used in the determination shall be documented.

* * * * *

(c) For the purposes of this subpart, all references to ''the proposal date for a referencing subpart'' and ''the proposal date of the referencing subpart'' in subpart WW mean September 4, 2007.

(d) For the purposes of this subpart, all references to ''10 years after promulgation of the referencing subpart'' and ''10 years after the promulgation date of the referencing subpart'' in subpart WW mean the date 10 years after publication of the final amendments in the **Federal Register**.

(e) Failure to perform inspections and monitoring required by this section shall constitute a violation of the applicable standard of this subpart.

(f) References in § 63.1066(a) to initial startup notification requirements do not apply.

(g) References to the Periodic Reports in § 63.1066(b) mean the Periodic Report required by § 63.655(g).

9. Section 63.650 is amended by revising paragraph (a) to read as follows.

§ 63.650 Gasoline loading rack provisions.

(a) Except as provided in paragraphs (b) through (c) of this section, each owner or operator of a Group 1 gasoline loading rack classified under Standard Industrial Classification code 2911 located within a contiguous area and under common control with a petroleum refinery shall comply with subpart R, §§ 63.421, 63.422(a) through (c) and (e), 63.425(a) through (c) and (i), 63.425(e) through (h), 63.427(a) and (b), and 63.428(b), (c), (g)(1), (h)(1) through (3), and (k).

* * * * *

10. Section 63.651 is amended by revising paragraphs (a) and (c) to read as follows:

§ 63.651 Marine tank vessel loading operation provisions.

(a) Except as provided in paragraphs (b) through (d) of this section, each owner or operator of a marine tank vessel loading operation located at a petroleum refinery shall comply with the requirements of §§ 63.560 through 63.568.

* * * * *

(c) The notification reports under § 63.567(b) are not required.

* * * * *

11. Section 63.652 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (d)(2);

c. Revising paragraph (e)(5);
d. Revising the first sentence of paragraph (f)(3) introductory text;
e. Revising the first sentence in paragraph (g)(5)(ii)(B)(*1*); and
f. Revising paragraph (l)(1) to read as follows:

§ 63.652 Emissions averaging provisions.

(a) This section applies to owners or operators of existing sources who seek to comply with the emission standard in § 63.642(g) by using emissions averaging according to § 63.642(l) rather than following the provisions of §§ 63.643 through 63.647, and §§ 63.650 and 63.651. Existing marine tank vessel loading operations located at the Valdez Marine Terminal source may not comply with the standard by using emissions averaging.

* * * * *

(d) * * *

(2) Group 1 emission points that are controlled by a reference control technology unless the reference control technology has been approved for use in a different manner and a higher nominal efficiency has been assigned according to the procedures in paragraph (i) of this section;

* * * * *

(e) * * *

(5) Record and report quarterly and annual credits and debits in the Periodic Reports as specified in § 63.655(g)(8). Every fourth Periodic Report shall include a certification of compliance with the emissions averaging provisions as required by § 63.655(g)(8)(iii).

(f) * * *

(3) For emission points for which continuous monitors are used, periods of excess emissions as defined in § 63.655(g)(6)(i). * * *

* * * * *

(g) * * *
(5) * * *
(ii) * * *
(B) * * *

(*1*) The percent reduction for a control device shall be measured according to the procedures and test methods specified in § 63.565(d) of subpart Y. * * *

* * * * *

(l) * * *

(1) The owner or operator shall notify the Administrator of excess emissions in the Periodic Reports as required in § 63.655(g)(6).

* * * * *

12. Section 63.653 is amended by:
a. Revising paragraphs (a)(3)(i) and (a)(7);
b. Revising paragraph (b);
c. Revising paragraph (c); and
d. Revising paragraph (d) introductory text, paragraph (d)(2)(vii) introductory text, and paragraph (d)(2)(viii)(G) to read as follows:

§ 63.653 Monitoring, recordkeeping, and implementation plan for emissions averaging.

(a) * * *
(3) * * *

(i) Perform the monitoring or inspection procedures in § 63.646 and § 63.1063 of subpart WW; and

* * * * *

(7) If an emission point in an emissions average is controlled using a pollution prevention measure or a device or technique for which no monitoring parameters or inspection procedures are specified in §§ 63.643 through 63.647 and §§ 63.650 and 63.651, the owner or operator shall establish a site-specific monitoring parameter and shall submit the information specified in § 63.655(h)(4) in the Implementation Plan.

(b) Records of all information required to calculate emission debits and credits and records required by § 63.655 shall be retained for 5 years.

(c) Notifications of Compliance Status report, Periodic Reports, and other reports shall be submitted as required by § 63.655.

(d) Each owner or operator of an existing source who elects to comply with § 63.655(g) and (h) by using emissions averaging for any emission points shall submit an Implementation Plan.

* * * * *

(2) * * *

(vii) The information specified in § 63.655(h)(4) for:

* * * * *

(viii) * * *

(G) For each pollution prevention measure, treatment process, or control device used to reduce air emissions of organic HAP from wastewater and for which no monitoring parameters or inspection procedures are specified in § 63.647, the information specified in § 63.655(h)(4) shall be included in the Implementation Plan.

* * * * *

13. Sections 63.654 and 63.655 are redesignated as §§ 63.655 and 63.656.

14. A new § 63.654 is added to read as follows:

§ 63.654 Heat exchange systems.

(a) Except as specified in paragraph (b) of this section, the owner or operator of a heat exchange system that meets the criteria in § 63.640(c)(8) must comply with the requirements of paragraphs (c) through (g) of this section.

(b) A heat exchange system is exempt from the requirements in paragraphs (c) through (g) of this section if it meets any one of the criteria in paragraphs (b)(1) through (3) of this section.

(1) The heat exchange system operates with the minimum pressure on the cooling water side at least 35 kilopascals greater than the maximum pressure on the process side.

(2) The heat exchange system contains an intervening cooling fluid, containing less than 5 percent by weight of total HAP listed in Table 1 to this subpart, between the process and the cooling water. This intervening fluid must serve to isolate the cooling water from the process fluid and must not be sent through a cooling tower or discharged. For purposes of this section, discharge does not include emptying for maintenance purposes.

(3) The heat exchange system cools process fluids that contain less than 5 percent by weight of total HAP listed in Table 1 to this subpart (*i.e.*, the heat exchange system is not in organic HAP service as defined in this subpart).

(c) You must perform monthly monitoring to identify leaks of total strippable volatile organic compound (VOC) from each heat exchange system subject to the requirements of this subpart according to the procedures in paragraphs (c)(1) and (2) of this section.

(1) Collect and analyze a sample from each cooling tower return line prior to exposure to air for each heat exchanger system in organic HAP service or from each heat exchanger exit line for each heat exchanger in organic HAP service within that heat exchange system to determine the total strippable VOC concentration (as methane) from the air stripping testing system using ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference-see § 63.14).

(2) For a heat exchange system at an existing source, a leak is a total strippable VOC concentration (as methane) in the stripping gas of 6.2 ppmv or greater. For a heat exchange system at a new source, a leak is a total strippable VOC concentration (as methane) in the stripping gas of 3.1 ppmv or greater.

(d) If a leak is detected, you must repair the leak to reduce the measured concentration to below the applicable action level as soon as practicable, but no later than 45 days after identifying the leak, except as specified in paragraphs (e) and (f). Actions that can be taken to achieve repair include but are not limited to:

(1) Physical modifications to the leaking heat exchanger, such as welding the leak or replacing a tube;

(2) Blocking the leaking tube within the heat exchanger;

(3) Changing the pressure so that water flows into the process fluid;

(4) Replacing the heat exchanger or heat exchanger bundle; or

(5) Isolating, bypassing, or otherwise removing the leaking heat exchanger from service until it is otherwise repaired.

(e) If you detect a leak when monitoring a cooling tower return line under paragraph (c)(1), you may conduct additional monitoring to identify leaks of total strippable VOC emissions using Modified El Paso method from each heat exchanger in organic HAP service associated with the heat exchange system for which the leak was detected. If the additional monitoring shows that the total strippable VOC concentration in the stripped air at the heat exchanger exit line for each heat exchanger in organic HAP service is less than 6.2 ppmv for existing sources or less than 3.1 ppmv for new sources, the heat exchange system is excluded from repair requirements in paragraph (d).

(f) You may delay the repair of a leaking heat exchanger when you meet one of the conditions in paragraphs (f)(1) through (3) of this section. You must determine if a delay of repair is necessary as soon as practicable, but no later than 45 days after first identifying the leak.

(1) If the repair is technically infeasible without a shutdown and the total strippable VOC concentration (as methane) is initially and remains less than 62 ppmv for all monthly monitoring periods during the delay of repair, you may delay repair until the next scheduled shutdown of the heat exchange system. If, during subsequent monthly monitoring, the total strippable VOC concentration (as methane) is 62 ppmv or greater, you must repair the leak within 30 days of the monitoring event in which the leak was equal to or exceeded 62 ppmv total strippable VOC (as methane), except as provided in paragraph (f)(3) of this section.

(2) If the necessary equipment, parts, or personnel are not available and the total strippable VOC concentration (as methane) is initially and remains less than 62 ppmv for all monthly monitoring periods during the delay of repair, you may delay the repair for a maximum of 120 calendar days. You must demonstrate that the necessary equipment, parts, or personnel were not available. If, during subsequent monthly monitoring, the total strippable VOC concentration (as methane) is 62 ppmv or greater, you must repair the leak within 30 days of the monitoring event in which the leak was equal to or exceeded 62 ppmv total strippable VOC (as methane), except as provided in paragraph (f)(3) of this section, or the original 120 day delay of repair deadline, whichever occurs first.

(3) Prior to [3 years after the date of publication of the final amendments in the **Federal Register**], you may delay the repair of a heat exchanger for which the total strippable VOC concentration (as methane) is 62 ppmv or greater as provided in paragraphs (f)(3)(i) through (f)(3)(iii) of this section. On and after the date [3 years after publication of the final amendments in the **Federal Register**], you are not allowed to delay the repair of a heat exchanger for which the total strippable VOC concentration (as methane) is 62 ppmv or greater.

(i) If the repair is technically infeasible without a shutdown and a shutdown of the unit is scheduled within 60 days of determining a delay of repair is necessary.

(ii) If the necessary equipment, parts, or personnel are not available, may delay the repair for a maximum of 120 calendar days.

(iii) If the repair is technically infeasible without a shutdown and a shutdown of the unit will cause more emissions than the delay of repair.

(g) To delay the repair under paragraph (f), you must record the information in paragraphs (g)(1) through (g)(4) of this section.

(1) The reason(s) for delaying repair.

(2) A schedule for completing the repair as soon as practical.

(3) The date and concentration of the leak as first identified and the results of all subsequent monthly monitoring events during the delay of repair.

(4) An estimate of the potential emissions from the leaking heat exchange system or heat exchanger following the procedures in paragraphs (g)(4)(i) and (g)(4)(ii) of this section.

(i) Determine the total strippable VOC concentration in the cooling water, in parts per million by weight (ppmw), using equation 7–1 from Modified El Paso method (incorporated by reference in § 63.14), based on the total strippable concentration in the stripped air, ppmv, from monitoring.

(ii) Calculate the VOC emissions for the leaking heat exchange system or heat exchanger by multiplying the VOC concentration in the cooling water, ppmw, by the flow rate of the cooling water from the leaking tower or heat exchanger and by the expected duration of the delay.

15. Newly redesignated § 63.655 is amended by:

a. Revising the first sentence of paragraph (b);

b. Revising the first sentence of paragraph (c);

c. Revising paragraph (f)(1) introductory text and adding paragraph (f)(1)(vi);

d. Revising paragraph (g) introductory text, and paragraphs (g)(1), (g)(2), (g)(3), (g)(5), and (g)(8)(ii)(C);

e. Adding paragraph (g)(9);

f. Revising the first sentence in paragraph (h)(2)(i)(B) and revising paragraph (h)(2)(ii);

g. Revising paragraph (i)(1);

h. Redesignating existing paragraph (i)(4) as (i)(5); and

i. Adding paragraph (i)(4) to read as follows:

§ 63.655 Reporting and recordkeeping requirements.

* * * * *

(b) Each owner or operator subject to the gasoline loading rack provisions in § 63.650 shall comply with the recordkeeping and reporting provisions in § 63.428(b) and (c), (g)(1), (h)(1) through (h)(3), and (k) of subpart R. * * *

(c) Each owner or operator subject to the marine tank vessel loading operation standards in § 63.651 shall comply with the recordkeeping and reporting provisions in § 63.567(a) and § 63.567(c) through (k) of subpart Y. * * *

* * * * *

(f) * * *

(1) The Notification of Compliance Status report shall include the information specified in paragraphs (f)(1)(i) through (f)(1)(vi) of this section.

* * * * *

(vi) For each heat exchange system, identification of the heat exchange systems that are subject to the requirements of this subpart.

* * * * *

(g) The owner or operator of a source subject to this subpart shall submit Periodic Reports no later than 60 days after the end of each 6-month period when any of the compliance exceptions specified in paragraphs (g)(1) through (6) of this section or paragraph (g)(9) of this section occur. The first 6-month period shall begin on the date the Notification of Compliance Status report is required to be submitted. A Periodic Report is not required if none of the compliance exceptions identified in paragraph (g)(1) through (6) of this section or paragraph (g)(9) of this section occurred during the 6-month period unless emissions averaging is utilized. Quarterly reports must be submitted for emission points included in emission averages, as provided in paragraph (g)(8) of this section. An owner or operator may submit reports required by other regulations in place of or as part of the Periodic Report required by this paragraph if the reports contain the information required by paragraphs (g)(1) through (9) of this section.

(1) For storage vessels, Periodic Reports shall include the information specified for Periodic Reports in paragraph (g)(2) through (g)(5) of this section.

(2) An owner or operator who elects to comply with § 63.646 by using a fixed roof and an internal floating roof or by using an external floating roof converted to an internal floating roof shall submit the results of each inspection conducted in accordance with § 63.1063(c)(1), (d)(1), and (d)(2) of subpart WW in which a failure is detected in the control equipment. For vessels for which inspections are required under § 63.1063(c) and (d), the specifications and requirements listed in paragraphs (g)(2)(i) through (g)(2)(iii) of this section apply.

(i) A failure is defined in § 63.1063(d)(1) of subpart WW.

(ii) Each Periodic Report shall include a copy of the inspection record required by § 63.1065(b) of subpart WW when a failure occurs.

(iii) An owner or operator who elects to use an extension in accordance with § 63.1063(e)(2) of subpart WW shall, in the next Periodic Report, submit the documentation required by § 63.1063(e)(2).

(3) An owner or operator who elects to comply with § 63.646(a) through (l) by using an external floating roof shall meet the periodic reporting requirements specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this section.

(i) For vessels for which inspections are required under § 63.1063(c)(2), (d)(1), and (d)(3) of subpart WW, the owner or operator shall submit, as part of the Periodic Report, a copy of the inspection record required by § 63.1065(b) of subpart WW when a failure occurs. A failure is defined in § 63.1063(d)(1).

(ii) An owner or operator who elects to use an extension in accordance with § 63.1063(e)(2) or § 63.1063(c)(2)(iv)(B) of subpart WW shall, in the next Periodic Report, submit the documentation required by those paragraphs.

* * * * *

(5) An owner or operator who elects to comply with § 63.646 by installing a closed vent system and other alternate control device as described in § 63.1064 of subpart WW shall submit, as part of the next Periodic Report, a written application as described in § 63.1066(b)(3) of subpart WW.

* * * * *

(8) * * *

(ii) * * *

(C) The information required to be reported by §§ 63.567(e)(4) and 63.567(j)(3) of subpart Y for each marine tank vessel loading operation included in an emissions average, unless the information has already been submitted in a separate report;

* * * * *

(9) For heat exchange systems, Periodic Reports must include the following information:

(i) The number of heat exchange systems in HAP service.

(ii) The number of heat exchange systems in HAP service found to be leaking.

(iii) A summary of the monitoring data that indicate a leak, including the number of leaks determined to be equal to or greater than the leak definitions specified in § 63.654(c)(2);

(iv) If applicable, the date a leak was identified, the date the source of the leak was identified, and the date of repair;

(v) If applicable, a summary of the reason for delayed repair of any leak and the date of repair; and

(vi) Estimate of VOC emissions for delay of repair.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(B) Except as provided in paragraph (h)(2)(i)(C) of this section, if the internal inspection required by § 63.1063(d)(1) of subpart WW is not planned and the owner or operator could not have known about the inspection 30 calendar days in advance of refilling the vessel with organic HAP, the owner or operator shall notify the Administrator at least 7 calendar days prior to refilling of the storage vessel. * * *

* * * * *

(ii) In order to afford the Administrator the opportunity to have an observer present, the owner or operator of a storage vessel equipped with an external floating roof shall notify the Administrator of any seal gap measurements. The notification shall be made in writing at least 30 calendar days in advance of any gap measurements required by § 63.1062(d)(3) of subpart WW. The State or local permitting authority can waive this notification requirement for all or some storage vessels subject to the rule or can allow less than 30 calendar days' notice.

* * * * *

(i) * * *

(1) Each owner or operator subject to the storage vessel provisions in § 63.646 shall keep records as specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this section.

(i) Each owner or operator of a Group 1 storage vessel subject to the provisions in § 63.646 shall keep the records specified in § 63.1065 of subpart WW.

(ii) Each owner or operator of a Group 2 storage vessel shall keep the records specified in § 63.1065(a) of subpart WW. If a storage vessel is determined to be Group 2 because the weight percent total organic HAP of the stored liquid is less than or equal to 4 percent for existing sources or 2 percent for new sources, a record of any data, assumptions, and procedures used to make this determination shall be retained.

* * * * *

(4) The owner or operator of a heat exchange system subject to the monitoring requirements in § 63.654 shall comply with the recordkeeping requirements in paragraphs (i)(4)(i) through (v) of this section.

(i) Identification of all heat exchangers at the facility and the average annual HAP concentration and the range of HAP concentrations of process fluid or intervening cooling fluid described in § 63.654(c).

(ii) Identification of all heat exchange systems that are in organic HAP service. For each heat exchange system that is subject to this subpart, this must include identification of all heat exchangers within each heat exchange system, identification of the individual heat exchangers in organic HAP service within each heat exchange system, and the cooling tower included in each heat exchange system.

(iii) Results of the following monitoring data for each monthly monitoring event:

(A) Date/time of event.

(B) Barometric pressure.

(C) El Paso air stripping apparatus water flow (ml/min) and air flow, ml/min, and air temperature, C.

(D) FID reading (ppmv).

(E) Heat exchange exit line flow or cooling tower return line flow, gal/min.

(F) Calibration information identified in Section 5.4.2 of the Modified El Paso Method, incorporated by reference in § 63.14(n).

(iv) The date when a leak was identified and the date when the heat exchanger was repaired or taken out of service.

(v) If a repair is delayed, the reason for the delay, the schedule for completing the repair, and the estimate of potential emissions for the delay of repair.

* * * * *

16. Newly redesignated § 63.656 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

§ 63.656 Implementation and enforcement.

* * * * *

(c) * * *

(1) Approval of alternatives to the requirements in §§ 63.640, 63.642(g) through (l), 63.643, 63.646 through 63.652, and 63.654. * * *

* * * * *

Appendix to Subpart CC of Part 63–Tables [Amended]

17. Table 1 of the appendix to subpart CC is revised to read as follows:

TABLE 1 TO SUBPART CC OF PART 63—HAZARDOUS AIR POLLUTANTS

Chemical name	CAS No.[a]
Benzene	71432
Biphenyl	92524
Butadiene (1,3)	10990
Carbon disulfide	75150
Carbonyl sulfide	463581
Cresol (mixed isomers [b])	1319773
Cresol (m-)	108394
Cresol (o-)	95487
Cresol (p-)	106445
Cumene	98828
Dibromoethane (1,2) (ethylene dibromide)	106934
Dichloroethane (1,2)	107062
Diethanolamine	111422
Ethylbenzene	100414
Ethylene glycol	107211
Hexane	110543
Methanol	67561
Methyl isobutyl ketone (hexone)	108101
Methyl tert butyl ether	1634044
Naphthalene	91203
Phenol	108952
Toluene	108883
Trimethylpentane (2,2,4)	540841
Xylene (mixed isomers [b])	1330207
xylene (m-)	108383
xylene (o-)	95476
xylene (p-)	106423

[a] CAS number = Chemical Abstract Service registry number assigned to specific compounds, isomers, or mixtures of compounds.

[b] Isomer means all structural arrangements for the same number of atoms of each element and does not mean salts, esters, or derivatives.

18. Table 4 of the appendix to subpart CC is revised to read as follows:

TABLE 4 TO SUBPART CC OF PART 63—GASOLINE DISTRIBUTION EMISSION POINT RECORDKEEPING AND REPORTING REQUIREMENTS[a]

Reference (section of subpart Y)	Description	Comment
63.428(b) or (k)	Records of test results for each gasoline cargo tank loaded at the facility.	
63.428(c)	Continuous monitoring data recordkeeping requirements.	
63.428(g)(1)	Semiannual report loading rack information	Required to be submitted with the Periodic Report required under 40 CFR part 63, subpart CC.
63.428 (h)(1) through (h)(3)	Excess emissions report loading rack information	Required to be submitted with the Periodic Report required under 40 CFR part 63, subpart CC.

[a] This table does not include all the requirements delineated under the referenced sections. See referenced sections for specific requirements.

19. Table 5 of the appendix to subpart CC is revised to read as follows:

TABLE 5 TO SUBPART CC OF PART 63—MARINE VESSEL LOADING AND UNLOADING OPERATIONS RECORDKEEPING AND REPORTING REQUIREMENTS[a]

Reference (section of subpart Y)	Description	Comment
63.562(e)(2)	Operation and maintenance plan for control equipment and monitoring equipment.	
63.565(a)	Performance test/site test plan	The information required under this paragraph is to be submitted with the Notification of Compliance Status report required under 40 CFR part 63, subpart CC.
63.565(b)	Performance test data requirements.	
63.567(a)	General Provisions (subpart A) applicability.	
63.567(c)	Request for extension of compliance.	
63.567(d)	Flare recordkeeping requirements.	
63.567(e)	Summary report and excess emissions and monitoring system performance report requirements.	The information required under this paragraph is to be submitted with the Periodic Report required under 40 CFR part 63, subpart CC.
63.567(f)	Vapor collection system engineering report.	
63.567(g)	Vent system valve bypass recordkeeping requirements.	
63.567(h)	Marine vessel vapor-tightness documentation.	
63.567(i)	Documentation file maintenance.	
63.567(j)	Emission estimation reporting and recordkeeping procedures.	

[a] This table does not include all the requirements delineated under the referenced sections. See referenced sections for specific requirements.

20. Table 6 of the appendix to subpart CC is revised to read as follows:

TABLE 6 TO SUBPART CC OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC[a]

Reference	Applies to subpart CC	Comment
63.1(a)(1)	Yes	
63.1(a)(2)	Yes	
63.1(a)(3)	Yes	
63.1(a)(4)	Yes	
63.1(a)(5)	No	Reserved.
63.1(a)(6)	Yes	Except the correct mail drop (MD) number is C404–04.
63.1(a)(7)–63.1(a)(9)	No	Reserved.
63.1(a)(10)	Yes	
63.1(a)(11)	Yes	
63.1(a)(12)	Yes	
63.1(b)(1)	Yes	Except subpart CC specifies pollutants subject to the rule are listed in Table 1.
63.1(b)(2)	No	Reserved.
63.1(b)(3)	Yes	
63.1(c)(1)	Yes	
63.1(c)(2)	Yes	Except area sources are not subject to subpart CC and are not required to obtain a title V permit solely for subpart CC.
63.1(c)(3)–63.1(c)(4)	No	Reserved.
63.1(c)(5)	Yes	Except that sources are not required to submit notifications overridden by this table.
63.1(d)	No	Reserved.
63.1(e)	No	No CAA section 112(j) standard applies to the affected sources under subpart CC.
63.2	Yes	§ 63.641 of subpart CC specifies that if the same term is defined in subparts A and CC, it shall have the meaning given in subpart CC.
63.3	Yes	
63.4(a)(1)–63.4(a)(2)	Yes	
63.4(a)(3)–63.4(a)(5)	No	Reserved.
63.4(b)	Yes	
63.4(c)	Yes	
63.5(a)	Yes	
63.5(b)(1)	Yes	
63.5(b)(2)	No	Reserved.
63.5(b)(3)	Yes	
63.5(b)(4)	Yes	Except the cross-reference to § 63.9(b) is changed to § 63.9(b)(4) and (5). Subpart CC overrides § 63.9(b)(2).
63.5(b)(5)	No	Reserved.
63.5(b)(6)	Yes	
63.5(c)	No	Reserved.
63.5(d)	Yes	Except that the application in § 63.5(d)(1)(i) shall be submitted as soon as practicable before startup, but no later than 90 days after the promulgation date of subpart CC if the construction or reconstruction had commenced and initial startup had not occurred before the promulgation of subpart CC.
63.5(e)	Yes	
63.5(f)	Yes	
63.6(a)	Yes	
63.6(b)(1)–63.6(b)(5)	No	Subpart CC specifies compliance dates and notifications for sources subject to subpart CC.
63.6(b)(6)	No	Reserved.
63.6(b)(7)	Yes	
63.6(c)(1)–63.6(c)(2)	No	§ 63.640 of subpart CC specifies the compliance date.
63.6(c)(3)–63.6(c)(4)	No	Reserved.
63.6(c)(5)	Yes	
63.6(d)	No	Reserved.
63.6(e)(1)	Yes	Except the startup, shutdown, or malfunction plan does not apply to Group 2 emission points that are not part of an emissions averaging group.[b]
63.6(e)(2)	No	Reserved.
63.6(e)(3)(i)	Yes	Except the startup, shutdown, or malfunction plan does not apply to Group 2 emission points that are not part of an emissions averaging group.[b]
63.6(e)(3)(ii)	No	Reserved.
63.6(e)(3)(iii)–63.6(e)(3)(ix).	Yes	Except the reports specified in § 63.6(e)(3)(iv) do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in the next periodic report.
63.6(f)	Yes	Except the phrase "as specified in § 63.7(c)" in § 63.6(f)(2)(iii)(D) does not apply because subpart CC does not require a site-specific test plan.
63.6(g)	Yes	
63.6(h)(1) and 63.6(h)(2)	Yes	Except subparagraph § 63.6(h)(2)(ii), which is reserved.
63.6(h)(3)	No	Reserved.
63.6(h)(4)	No	Notification of visible emission test not required in subpart CC.
63.6(h)(5)	No	Visible emission requirements and timing is specified in § 63.645(i) of subpart CC.
63.6(h)(6)	Yes	
63.6(h)(7)	No	Subpart CC does not require opacity standards.

TABLE 6 TO SUBPART CC OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC[a]—Continued

Reference	Applies to subpart CC	Comment
63.6(h)(8)	Yes	
63.6(h)(9)	No	Subpart CC does not require opacity standards.
63.6(i)	Yes	Except for § 63.6(i)(15), which is reserved.
63.6(j)	Yes	
63.7(a)(1)	Yes	
63.7(a)(2)	Yes	Except test results must be submitted in the Notification of Compliance Status report due 150 days after compliance date, as specified in § 63.655(f) of subpart CC.
63.7(a)(3)	Yes	
63.7(a)(4)	Yes	
63.7(b)	No	Subpart CC requires notification of performance test at least 30 days (rather than 60 days) prior to the performance test.
63.7(c)	No	Subpart CC does not require a site-specific test plan.
63.7(d)	Yes	
63.7(e)(1)	Yes	Except the performance test must be conducted at the maximum representative capacity as specified in § 63.642(d)(3) of subpart CC.
63.7(e)(2)–63.7(e)(4)	Yes	
63.7(f)	No	Subpart CC specifies applicable methods and provides alternatives without additional notification or approval.
63.7(g)	No	Performance test reporting specified in § 63.655(f).
63.7(h)(1)	Yes	
63.7(h)(2)	Yes	
63.7(h)(3)	Yes	Yes, except site-specific test plans shall not be required, and where § 63.7(g)(3) specifies submittal by the date the site-specific test plan is due, the date shall be 90 days prior to the Notification of Compliance Status report in § 63.655(f).
63.7(h)(4)(i)	Yes	
63.7(h)(4)(ii)	No	Site-specific test plans are not required in subpart CC.
63.7(h)(4)(iii) and (iv)	Yes	
63.7(h)(5)	Yes	
63.8(a)	Yes	Except § 63.8(a)(3), which is reserved.
63.8(b)	Yes	
63.8(c)(1)	Yes	
63.8(c)(2)	Yes	
63.8(c)(3)	Yes	Except that verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment would monitor accurately.
63.8(c)(4)	No	Subpart CC specifies monitoring frequency in § 63.655(i)(3) of subpart CC.
63.8(c)(5)–63.8(c)(8)	No	
63.8(d)	No	
63.8(e)	No	Subpart CC does not require performance evaluations; however, this shall not abrogate the Administrator's authority to require performance evaluation under section 114 of the Clean Air Act.
63.8(f)(1)	Yes	
63.8(f)(2)	Yes	
63.8(f)(3)	Yes	
63.8(f)(4)(i)	No	Timeframe for submitting request is specified in § 63.655(h)(5)(i) of subpart CC.
63.8(f)(4)(ii)	Yes	
63.8(f)(4)(iii)	No	Timeframe for submitting request is specified in § 63.655(h)(5)(i) of subpart CC.
63.8(f)(5)	Yes	
63.8(f)(6)	No	Subpart CC does not require continuous emission monitors.
63.8(g)	No	Subpart CC specifies data reduction procedures in § 63.655(i)(3).
63.9(a)	Yes	Except that the owner or operator does not need to send a copy of each notification submitted to the Regional Office of the EPA as stated in § 63.9(a)(4)(ii).
63.9(b)(1)	Yes	Except the notification of compliance status report specified in § 63.655(f) of subpart CC may also serve as the initial compliance notification required in § 63.9(b)(1)(iii).
63.9(b)(2)	No	A separate Initial Notification report is not required under subpart CC.
63.9(b)(3)	No	Reserved.
63.9(b)(4)	Yes	Except for subparagraphs § 63.9(b)(4)(ii) through (iv), which are reserved.
63.9(b)(5)	Yes	
63.9(c)	Yes	
63.9(d)	Yes	
63.9(e)	No	Subpart CC requires notification of performance test at least 30 days (rather than 60 days) prior to the performance test and does not require a site-specific test plan.
63.9(f)	No	Subpart CC does not require advanced notification of visible emissions test.
63.9(g)	No	
63.9(h)	No	Subpart CC § 63.655(f) specifies Notification of Compliance Status report requirements.
63.9(i)	Yes	
63.9(j)	No	
63.10(a)	Yes	
63.10(b)(1)	No	§ 63.644(d) of subpart CC specifies record retention requirements.
63.10(b)(2)(i)	Yes	

TABLE 6 TO SUBPART CC OF PART 63—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC[a]—Continued

Reference	Applies to subpart CC	Comment
63.10(b)(2)(ii)	Yes	
63.10(b)(2)(iii)	No	
63.10(b)(2)(iv)	Yes	
63.10(b)(2)(v)	Yes	
63.10(b)(2)(vi)	Yes	
63.10(b)(2)(vii)	No	
63.10(b)(2)(viii)	Yes	
63.10(b)(2)(ix)	Yes	
63.10(b)(2)(x)	Yes	
63.10(b)(2)(xi)	No	
63.10(b)(2)(xii)	Yes	
63.10(b)(2)(xiii)	No	
63.10(b)(2)(xiv)	Yes	
63.10(b)(3)	Yes	
63.10(c)(1)–63.10(c)(6)	No	
63.10(c)(7) and 63.10(c)(8).	Yes	
63.10(c)(9)–63.10(c)(15)	No	
63.10(d)(1)	Yes	
63.10(d)(2)	No	§ 63.655(f) of subpart CC specifies performance test reporting.
63.10(d)(3)	No	Results of visible emissions test are included in Compliance Status Report as specified in § 63.655(f).
63.10(d)(4)	Yes	
63.10(d)(5)(i)	Yes[b]	Except that reports required by § 63.10(d)(5)(i) may be submitted at the same time as periodic reports specified in § 63.655(g) of subpart CC.
63.10(d)(5)(ii)	Yes	Except that actions taken during a startup, shutdown, or malfunction that are not consistent with the startup, shutdown, and malfunction plan and that cause the source to exceed any applicable emission limitation do not need to be reported within 2 and 7 days of commencing and completing the action, respectively, but must be included in the next periodic report.
63.10(e)	No	
63.10(f)	Yes	
63.11–63.16	Yes	

[a] Wherever subpart A specifies "postmark" dates, submittals may be sent by methods other than the U.S. Mail (*e.g.,* by fax or courier). Submittals shall be sent by the specified dates, but a postmark is not required.

[b] The plan, and any records or reports of startup, shutdown, and malfunction do not apply to Group 2 emission points that are not part of an emissions averaging group.

21. Table 10 of the appendix to subpart CC is amended by revising footnotes d, f, and g to read as follows:

Table 10 to Subpart CC of Part 63—Miscellaneous Process Vents—Monitoring, Recordkeeping, and Reporting Requirements for Complying With 98 Weight-Percent Reduction of Total Organic HAP Emissions or a Limit of 20 Parts Per Million by Volume

* * * * *

[d] NCS = Notification of Compliance Status Report described in § 63.655.

* * * * *

[f] When a period of excess emission is caused by insufficient monitoring data, as described in § 63.655(g)(6)(i)(C) or (D), the duration of the period when monitoring data were not collected shall be included in the Periodic Report.

[g] PR = Periodic Reports described in § 63.655(g).

* * * * *

[FR Doc. E8–26403 Filed 11–7–08; 8:45 am]

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Viral Hemorrhagic Septicemia; Interstate Movement and Import Restrictions on Certain Live Fish; published 9-9-08

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Coastal Pelagic Species Fisheries; Reporting Requirements and Conservation Measures; published 10-10-08

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Civilian Health and Medical Program of the Uniformed Services (CHAMPUS):

Voluntary Disenrollment from the TRICARE Retiree Dental Program (TRDP); published 10-9-08

Indebtedness of Military Personnel; published 10-9-08

Procedures and Support for Non-Federal Entities Authorized to Operate on Department of Defense (DoD) Installations; published 10-9-08

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Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; published 11-10-08

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Distribution of Certain Drug Products by Registered Blood Establishments and Comprehensive Hemophilia Diagnostic Treatment Centers; published 10-9-08

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Piscataqua River, Portsmouth, NH, and Kittery, ME, Maintenance; published 10-15-08

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Mortgagee Review Board (MRB); Amendments to the MRB Regulations; published 10-10-08

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Technical Standards For Electronic, Computer, Or Other Technologic Aids Used In The Play of Class II Games; published 10-10-08

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Minimal-Risk Regions and Importation of Meat, Meat Byproducts, and Meat Food Products Derived from Bovines 30 Months of Age or Older; comments due by 11-17-08; published 9-18-08 [FR E8-21786]

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Revised Management Authority for Dark Rockfish in the Bering Sea and Aleutian Islands Management Area and Gulf of Alaska; comments due by 11-17-08; published 9-24-08 [FR E8-22441]

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H.R. 6197/P.L. 110–448

To designate the facility of the United States Postal Service located at 7095 Highway 57 in Counce, Tennessee, as the "Pickwick Post Office Building". (Oct. 22, 2008; 122 Stat. 5013)

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2	(869–064–00002–5)	8.00	Jan. 1, 2008
3 (2006 Compilation and Parts 100 and 102)	(869–064–00003–3)	35.00	[1] Jan. 1, 2008
4	(869–064–00004–1)	13.00	Jan. 1, 2008
5 Parts:			
1–699	(869–064–00005–0)	63.00	Jan. 1, 2008
700–1199	(869–064–00006–8)	53.00	Jan. 1, 2008
1200–End	(869–064–00007–6)	64.00	Jan. 1, 2008
6	(869–064–00008–4)	13.50	Jan. 1, 2008
7 Parts:			
1–26	(869–064–00009–2)	47.00	Jan. 1, 2008
27–52	(869–064–00010–6)	52.00	Jan. 1, 2008
53–209	(869–064–00011–4)	40.00	Jan. 1, 2008
210–299	(869–064–00012–2)	65.00	Jan. 1, 2008
300–399	(869–064–00013–1)	49.00	Jan. 1, 2008
400–699	(869–064–00014–9)	45.00	Jan. 1, 2008
700–899	(869–064–00015–7)	46.00	Jan. 1, 2008
900–999	(869–064–00016–5)	63.00	Jan. 1, 2008
1000–1199	(869–064–00017–3)	22.00	Jan. 1, 2008
1200–1599	(869–064–00018–1)	64.00	Jan. 1, 2008
1600–1899	(869–064–00019–0)	67.00	Jan. 1, 2008
1900–1939	(869–064–00020–3)	31.00	Jan. 1, 2008
1940–1949	(869–064–00021–1)	50.00	Jan. 1, 2008
1950–1999	(869–064–00022–0)	49.00	Jan. 1, 2008
2000–End	(869–064–00023–8)	53.00	Jan. 1, 2008
8	(869–064–00024–6)	66.00	Jan. 1, 2008
9 Parts:			
1–199	(869–064–00025–4)	64.00	Jan. 1, 2008
200–End	(869–064–00026–2)	61.00	Jan. 1, 2008
10 Parts:			
1–50	(869–064–00027–1)	64.00	Jan. 1, 2008
51–199	(869–064–00028–9)	61.00	Jan. 1, 2008
200–499	(869–064–00029–7)	46.00	Jan. 1, 2008
500–End	(869–064–00030–1)	65.00	Jan. 1, 2008
11	(869–064–00031–9)	44.00	Jan. 1, 2008
12 Parts:			
1–199	(869–064–00032–7)	37.00	Jan. 1, 2008
200–219	(869–064–00033–5)	40.00	Jan. 1, 2008
220–299	(869–064–00034–3)	64.00	Jan. 1, 2008
300–499	(869–064–00035–1)	47.00	Jan. 1, 2008
500–599	(869–064–00036–0)	42.00	Jan. 1, 2008
600–899	(869–064–00037–8)	59.00	Jan. 1, 2008
900–End	(869–064–00038–6)	53.00	Jan. 1, 2008
13	(869–064–00039–4)	58.00	Jan. 1, 2008
14 Parts:			
1–59	(869–064–00040–8)	66.00	Jan. 1, 2008
60–139	(869–064–00041–6)	61.00	Jan. 1, 2008
140–199	(869–064–00042–4)	33.00	Jan. 1, 2008
200–1199	(869–064–00043–2)	53.00	Jan. 1, 2008
1200–End	(869–064–00044–1)	48.00	Jan. 1, 2008
15 Parts:			
0–299	(869–064–00045–9)	43.00	Jan. 1, 2008
300–799	(869–064–00046–7)	63.00	Jan. 1, 2008
800–End	(869–064–00047–5)	45.00	Jan. 1, 2008
16 Parts:			
0–999	(869–064–00048–3)	53.00	Jan. 1, 2008
1000–End	(869–064–00049–1)	63.00	Jan. 1, 2008
17 Parts:			
1–199	(869–064–00051–3)	53.00	Apr. 1, 2008
200–239	(869–064–00052–1)	63.00	Apr. 1, 2008
240–End	(869–064–00053–0)	65.00	Apr. 1, 2008
18 Parts:			
1–399	(869–064–00054–8)	65.00	Apr. 1, 2008
400–End	(869–064–00055–6)	29.00	Apr. 1, 2008
19 Parts:			
1–140	(869–064–00056–4)	64.00	Apr. 1, 2008
141–199	(869–064–00057–2)	61.00	Apr. 1, 2008
200–End	(869–064–00058–1)	34.00	Apr. 1, 2008
20 Parts:			
1–399	(869–064–00059–9)	53.00	Apr. 1, 2008
400–499	(869–064–00060–2)	67.00	Apr. 1, 2008
500–End	(869–064–00061–1)	66.00	Apr. 1, 2008
21 Parts:			
1–99	(869–064–00062–9)	43.00	Apr. 1, 2008
100–169	(869–064–00063–7)	52.00	Apr. 1, 2008
170–199	(869–064–00064–5)	53.00	Apr. 1, 2008
200–299	(869–064–00065–3)	20.00	Apr. 1, 2008
300–499	(869–064–00066–1)	33.00	Apr. 1, 2008
500–599	(869–064–00067–0)	50.00	Apr. 1, 2008
600–799	(869–064–00068–8)	20.00	Apr. 1, 2008
800–1299	(869–064–00069–6)	63.00	Apr. 1, 2008
1300–End	(869–064–00070–0)	28.00	Apr. 1, 2008
22 Parts:			
1–299	(869–064–00071–8)	66.00	Apr. 1, 2008
300–End	(869–064–00072–6)	48.00	Apr. 1, 2008
23	(869–064–00073–4)	48.00	Apr. 1, 2008
24 Parts:			
0–199	(869–064–00074–2)	63.00	Apr. 1, 2008
200–499	(869–064–00075–1)	53.00	Apr. 1, 2008
500–699	(869–064–00076–9)	33.00	Apr. 1, 2008
700–1699	(869–064–00077–7)	64.00	Apr. 1, 2008
1700–End	(869–064–00078–5)	33.00	Apr. 1, 2008
25	(869–064–00079–3)	67.00	Apr. 1, 2008
26 Parts:			
§§ 1.0–1–1.60	(869–064–00080–7)	52.00	Apr. 1, 2008
§§ 1.61–1.169	(869–064–00081–5)	66.00	Apr. 1, 2008
§§ 1.170–1.300	(869–064–00082–3)	63.00	Apr. 1, 2008
§§ 1.301–1.400	(869–064–00083–1)	50.00	Apr. 1, 2008
§§ 1.401–1.440	(869–064–00084–0)	59.00	Apr. 1, 2008
§§ 1.441–1.500	(869–064–00085–8)	61.00	Apr. 1, 2008
§§ 1.501–1.640	(869–064–00086–6)	52.00	Apr. 1, 2008
§§ 1.641–1.850	(869–064–00087–4)	64.00	Apr. 1, 2008
§§ 1.851–1.907	(869–064–00088–2)	64.00	Apr. 1, 2008
§§ 1.908–1.1000	(869–064–00089–1)	63.00	Apr. 1, 2008
§§ 1.1001–1.1400	(869–064–00090–4)	64.00	Apr. 1, 2008
§§ 1.1401–1.1550	(869–064–00091–2)	61.00	Apr. 1, 2008
§§ 1.1551–End	(869–064–00092–1)	53.00	Apr. 1, 2008
2–29	(869–064–00093–9)	63.00	Apr. 1, 2008
30–39	(869–064–00094–7)	44.00	Apr. 1, 2008
40–49	(869–064–00095–5)	31.00	[6] Apr. 1, 2008
50–299	(869–064–00096–3)	45.00	Apr. 1, 2008

Title	Stock Number	Price	Revision Date
300–499	(869–064–00097–1)	64.00	Apr. 1, 2008
500–599	(869–064–00098–0)	12.00	[5] Apr. 1, 2008
600–End	(869–064–00099–8)	20.00	Apr. 1, 2008
27 Parts:			
1–39	(869–064–00100–5)	35.00	Apr. 1, 2008
40–399	(869–064–00101–3)	67.00	Apr. 1, 2008
400–End	(869–064–00102–1)	21.00	Apr. 1, 2008
28 Parts:			
0–42	(869–064–00103–0)	64.00	July 1, 2008
43–End	(869–064–00104–8)	63.00	July 1, 2008
29 Parts:			
0–99	(869–064–00105–6)	53.00	July 1, 2008
*100–499	(869–064–00106–4)	26.00	July 1, 2008
*500–899	(869–064–00107–2)	61.00	[7] July 1, 2008
900–1899	(869–064–00108–1)	39.00	July 1, 2008
1900–1910 (§§ 1900 to 1910.999)	(869–064–00109–9)	64.00	July 1, 2008
*1910 (§§ 1910.1000 to end)	(869–064–00110–2)	46.00	[8] July 1, 2008
1911–1925	(869–064–00111–1)	33.00	July 1, 2008
1926	(869–064–00112–9)	53.00	July 1, 2008
1927–End	(869–064–00113–7)	65.00	July 1, 2008
30 Parts:			
1–199	(869–064–00114–5)	60.00	July 1, 2008
200–699	(869–064–00115–3)	53.00	July 1, 2008
700–End	(869–064–00116–1)	61.00	July 1, 2008
31 Parts:			
0–199	(869–064–00117–0)	44.00	July 1, 2008
200–499	(869–064–00118–8)	49.00	July 1, 2008
500–End	(869–064–00119–6)	65.00	July 1, 2008
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–064–00120–0)	64.00	July 1, 2008
191–399	(869–064–00121–8)	66.00	July 1, 2008
400–629	(869–064–00122–6)	53.00	July 1, 2008
630–699	(869–064–00123–4)	40.00	July 1, 2008
700–799	(869–064–00124–2)	49.00	July 1, 2008
800–End	(869–064–00125–1)	50.00	July 1, 2008
33 Parts:			
1–124	(869–064–00126–9)	60.00	July 1, 2008
125–199	(869–064–00127–7)	61.00	July 1, 2008
200–End	(869–064–00128–5)	60.00	July 1, 2008
34 Parts:			
1–299	(869–064–00129–3)	53.00	July 1, 2008
300–399	(869–064–00130–7)	43.00	July 1, 2008
400–End & 35	(869–064–00131–5)	64.00	July 1, 2008
36 Parts:			
*1–199	(869–064–00132–3)	40.00	July 1, 2008
*200–299	(869–064–00133–1)	37.00	July 1, 2008
300–End	(869–064–00134–0)	64.00	July 1, 2008
37	(869–064–00135–8)	61.00	July 1, 2008
38 Parts:			
0–17	(869–064–00136–6)	63.00	July 1, 2008
18–End	(869–064–00137–4)	65.00	July 1, 2008
39	(869–064–00138–2)	45.00	July 1, 2008
40 Parts:			
1–49	(869–064–00139–1)	63.00	July 1, 2008
50–51	(869–064–00140–4)	48.00	July 1, 2008
52 (52.01–52.1018)	(869–064–00141–2)	61.00	July 1, 2008
52 (52.1019–End)	(869–064–00142–1)	67.00	July 1, 2008
53–59	(869–064–00143–9)	34.00	July 1, 2008
60 (60.1–End)	(869–064–00144–7)	61.00	July 1, 2008
60 (Apps)	(869–064–00145–5)	60.00	July 1, 2008
61–62	(869–064–00146–3)	48.00	July 1, 2008
63 (63.1–63.599)	(869–064–00147–1)	61.00	July 1, 2008
*63 (63.600–63.1199)	(869–064–00148–0)	50.00	[8] July 1, 2008
63 (63.1200–63.1439)	(869–064–00149–8)	53.00	July 1, 2008
63 (63.1440–63.6175)	(869–064–00150–1)	35.00	July 1, 2008
63 (63.6580–63.8830)	(869–064–00151–0)	35.00	July 1, 2008
63 (63.8980–End)	(869–064–00152–8)	38.00	July 1, 2008
64–71	(869–064–00153–6)	32.00	July 1, 2008
72–80	(869–064–00154–4)	65.00	July 1, 2008
81–84	(869–064–00155–2)	53.00	July 1, 2008
85–86 (85–86.599–99)	(869–064–00156–1)	64.00	July 1, 2008
86 (86.600–1–End)	(869–064–00157–9)	53.00	July 1, 2008
87–99	(869–064–00158–7)	63.00	July 1, 2008
100–135	(869–064–00159–5)	48.00	July 1, 2008
*136–149	(869–064–00160–9)	64.00	July 1, 2008
150–189	(869–064–00161–7)	53.00	July 1, 2008
190–259	(869–064–00162–5)	42.00	July 1, 2008
260–265	(869–064–00163–3)	53.00	July 1, 2008
266–299	(869–064–00164–1)	53.00	July 1, 2008
300–399	(869–064–00165–0)	45.00	July 1, 2008
400–424	(869–064–00166–8)	59.00	July 1, 2008
*425–699	(869–064–00167–6)	61.00	[8] July 1, 2008
700–789	(869–064–00168–4)	64.00	July 1, 2008
790–End	(869–064–00169–2)	64.00	July 1, 2008
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–064–00170–6)	27.00	July 1, 2008
*101	(869–064–00171–4)	21.00	[8] July 1, 2008
102–200	(869–064–00172–2)	56.00	July 1, 2008
201–End	(869–064–00173–1)	27.00	July 1, 2008
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
*200–499	(869–060–00182–7)	34.00	[10] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
100–185	(869–062–00207–6)	63.00	Oct. 1, 2007
186–199	(869–062–00208–4)	23.00	Oct. 1, 2007
200–299	(869–062–00208–1)	32.00	Oct. 1, 2007
300–399	(869–062–00210–6)	32.00	Oct. 1, 2007
400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
1000–1199	(869–062–00213–1)	28.00	Oct. 1, 2007
1200–End	(869–062–00214–9)	34.00	Oct. 1, 2007
50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
17.1–17.95(b)	(869–062–00216–5)	32.00	Oct. 1, 2007
17.95(c)–end	(869–062–00217–3)	32.00	Oct. 1, 2007
17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
*17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[9] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
200–599	(869–062–00221–1)	45.00	Oct. 1, 2007
600–659	(869–062–00222–0)	31.00	Oct. 1, 2007
660–End	(869–062–00223–8)	31.00	Oct. 1, 2007
CFR Index and Findings Aids	(869–064–00050–5)	65.00	Jan. 1, 2008
Complete 2008 CFR set		1,499.00	2008
Microfiche CFR Edition:			
Subscription (mailed as issued)		406.00	2008
Individual copies		4.00	2008
Complete set (one-time mailing)		332.00	2007
Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2007, through July 1, 2008. The CFR volume issued as of July 1, 2007 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.